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The President

Proclamation 9527—National Historically Black Colleges and Universities Week, 2016

Correction

In Presidential document 2016–26070 beginning on page 74653 in the issue of Wednesday, October 26, 2016, make the following correction:

On page 74653, in the document heading, the date following ''Proclamation 9527 of'' should read ''October 21, 2016''.

[FR Doc. C1–2016–26070
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Rules and Regulations

Federal Register

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

U.S. Customs and Border Protection

19 CFR Part 103

Federal Emergency Management Agency

44 CFR Part 5

[Docket No. DHS–2009–0036]

RIN 1601–AA00

Freedom of Information Act Regulations

AGENCY: Office of the Secretary, U.S. Customs and Border Protection, and Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule amends the Department's regulations under the Freedom of Information Act (FOIA). The regulations have been revised to update and streamline the language of several procedural provisions, and to incorporate changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007. Additionally, the regulations have been updated to reflect developments in the case law.

DATES: This rule is effective December 22, 2016.

FOR FURTHER INFORMATION CONTACT: James V.M.L. Holzer, Deputy Chief FOIA Officer, DHS Privacy Office, (202) 343–1743.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Homeland Security has authority under 5 U.S.C. 301, 552, and 552a, and 6 U.S.C. 112(e), to issue FOIA and Privacy Act regulations. On January 27, 2003, the Department of Homeland Security (Department or DHS) published an interim rule in the **Federal Register** (68 FR 4056) that established DHS procedures for obtaining agency records under the FOIA, 5 U.S.C. 552, or Privacy Act, 5 U.S.C. 552a. DHS solicited comments on this interim rule, but received none.

In 2005, Executive Order 13392 called for the designation of a Chief FOIA Officer and FOIA Public Liaisons, along with the establishment of FOIA Requester Service Centers as appropriate. Subsequently, the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act), Public Law 110–175, required agencies to designate a Chief FOIA Officer who is then to designate one or more FOIA Public Liaisons (5 U.S.C. 552(j) and 552(k)(6)). Sections 6, 7, 9, and 10 of the OPEN Government Act amended provisions of the FOIA by setting time limits for agencies to act on misdirected requests and limiting the tolling of response times (5 U.S.C. 552(a)(6)(A)); requiring tracking numbers for requests that will take more than 10 days to process (5 U.S.C. 552(a)(7)(A)); providing requesters a telephone line or Internet service to obtain information about the status of their requests, including an estimated date of completion (5 U.S.C. 552(a)(7)(B)); expanding the definition of ''record'' to include records ''maintained for an agency by an entity under Government contract, for the purposes of records management'' (5 U.S.C. 552(f)(2)); and introducing alternative dispute resolution to the FOIA process through FOIA Public Liaisons (5 U.S.C. 552(a)(6)(B)(ii) & (l)) and the Office of Government Information Services (5 U.S.C. 552(h)(3)).

On July 29, 2015, the Department of Homeland Security published a proposed rule to amend existing regulations under the FOIA. *See* 80 FR 45101.[1] DHS accepted comments on the proposed rule through September 28, 2015. Finally, on June 30, 2016, the President signed into law the FOIA Improvement Act of 2016, Public Law 114–185, into law. DHS is now issuing a final rule that responds to public comments on the proposed rule and incorporates a number of changes required by the FOIA Improvement Act of 2016.

II. Discussion of Final Rule

A. Non-Discretionary Changes Required by the FOIA Improvement Act of 2016

In compliance with the FOIA Improvement Act of 2016, DHS has made the following changes to the proposed rule text:[2]

DHS has revised proposed CFR 5.8(a)(1), ''Requirements for filing an appeal,'' to change the current appeals period from 60 days to 90 days as required by section 2(1)(C) of the Act. DHS has also provided further clarification regarding the timely receipt of electronic submissions.

DHS has added 6 CFR 5.11(d)(3) to incorporate the portion of the Act that restricts an agency's ability to charge certain fees. Specifically, section 2(1)(B) of the Act provides that an agency may continue to charge fees as usual for an untimely response only if: A court has determined that exceptional circumstances exist, or (1) the requester has been timely advised of unusual circumstances, (2) more than 5000 pages are necessary to respond to the request, and (3) the component has contacted the requester (or made at least three good-faith attempts) about ways to narrow or revise the scope of the request. DHS has incorporated this requirement into this final rule without change.

DHS has removed a reference in proposed 6 CFR 5.1(a)(2) that referenced the agency's nonbinding policy to disclose exempt information when the agency reasonably foresees that disclosure would not harm an interest protected by an exemption. Because section 2(1)(D) of the Act codifies a substantially similar standard in law,

[1] Except as explicitly stated below, DHS incorporates by reference the section-by-section analysis contained in the preamble to the proposed rule.

[2] Although these changes represent departures from the proposed rule text, DHS for good cause finds that advance notice and an opportunity for public comment are not necessary in connection with these changes. *See* 5 U.S.C. 553(b)(B). Notice-and-comment is unnecessary because these changes simply reflect the current state of the law, consistent with the 2016 Act, and because these changes constitute a procedural rule exempt from notice-and-comment requirements under 5 U.S.C. 553(b)(A).

DHS is eliminating the proposed statement of policy to avoid confusion.

DHS has revised proposed 6 CFR 5.2 to conform to section 2(1)(A)(i) of the Act, which strikes a reference to public records that must be made available ''for public inspection and copying,'' and inserts in its place a reference to public records that must be made available ''for public inspection *in an electronic format*'' (emphasis added).

Finally, DHS has also revised proposed 6 CFR 5.5(c), 5.6(c), and 5.6(e) to conform to requirements in section 2(1)(C) of the Act, which require the agency to notify requesters of the availability of the Office of Government Information Services (OGIS) and the agency's FOIA Public Liaison to provide dispute resolution services.

B. Response to Comments and Other Changes From the Proposed Rule

In total, DHS received fifteen public submissions to its proposed rule, including one submission from another agency. DHS has given due consideration to each of the comments received and has made several modifications to the rule, as discussed in greater detail below. Below, DHS summarizes and responds to the significant comments received.[3] DHS has grouped the comments by section.

1. Comments on Proposed 6 CFR 5.1 (General Provisions) and 5.2 (Proactive Disclosures of DHS Records)

DHS proposed to revise 6 CFR 5.1 and 5.2 to, among other things, eliminate redundant text and incorporate reference to additional DHS policies and procedures relevant to the FOIA process. Two commenters suggested that the Department retain text in original 6 CFR 5.1(a)(1), which provides that information routinely provided to the public as part of a regular Department activity (for example, press releases) may be provided to the public without following the DHS FOIA regulations. The commenters stated that they opposed DHS's proposed removal of that language because not all DHS FOIA officers and FOIA personnel understand that such information is to be provided routinely. The commenters also stated that retaining the language would promote greater consistency in FOIA review. The Department has considered this suggestion and has determined that the revised language at 6 CFR 5.2 on proactive disclosure of department records adequately replaces the language in original 6 CFR 5.1(a)(1). The revised language provides for posting of records required to be made available to the public, as well as additional records of interest to the public that are appropriate for public disclosure (such as press releases). The Department has made considerable efforts across the components to ensure that records appropriate for public disclosure are proactively posted in agency reading rooms.

One commenter suggested that proposed 6 CFR 5.1(a)(1) be amended to reflect that the 1987 OMB guidelines referenced in the paragraph would only apply to the extent they are consistent with subsequent statutory changes. As is the case with any statutory change, if the law changes and the regulation or guidance is no longer consistent with the law, then DHS will comply with the law: In this case, changes in the statute would override the OMB guidelines. DHS declines to make this change, because it is self-evident that DHS only complies with OMB guidelines to the extent they are consistent with the governing statute.

Finally, upon further consideration of the proposed rule text, DHS has made a number of clarifying edits to proposed 6 CFR 5.1(a)(1). Because this content is adequately covered in 6 CFR 5.10, DHS has removed much of the discussion of this topic in 6 CFR 5.1(a)(1).

2. Comments on Proposed 6 CFR 5.3 (Requirements for Making Requests)

One commenter suggested that DHS retain the current 6 CFR 5.3(a), which requires requests for information about third-party individuals be accompanied by signed authorizations from the subject of the information. The commenter argued that removing the requirement for signed authorizations could harm individual privacy. However, the subject language in proposed 6 CFR 5.3(a)(4) brings the DHS regulation more into line with the language used by many other government agencies, including the Department of Justice, which provides interagency leadership on FOIA matters. *See* 28 CFR 16.3. In addition, final section 5.3(a)(4) makes plain the importance of third-party authorization. And as a matter of established case law, in conducting the balancing test between privacy interest and the public interest in disclosure of personal information, DHS will weigh the existence or non-existence of a signed authorization on a case-by-case basis; in many, but not all cases, the lack of a signed authorization may prove to be a barrier to access of third-party records unless a significant public interest is raised. As such, DHS declines to alter the proposed language.

The same commenter suggested that a caveat be included allowing access to the records of public officials without signed authorization because this would facilitate access to information about government officials. As noted above, DHS considers every request seeking access to third party information under a balancing test that evaluates the privacy of the individual subject of the records against the public interest in disclosing such information. Depending on the information sought, some of the records of government officials may be available without the need for a signed authorization. However, all records of all government officials will not meet the requirements of the balancing test. Therefore, DHS declines to create a blanket policy to waive the personal privacy interests of government officials in their records.

As proposed, 6 CFR 5.3(c) would allow DHS to administratively close a request that does not adequately describe the records, if the requester does not respond within 30 days to DHS's request for additional information. One commenter requested that DHS clarify how DHS may make such a request (*e.g.,* by telephone or in writing or both), how a requester may respond, and whether a written response would be considered timely if it were postmarked or transmitted electronically within 30 days. DHS has revised the regulatory text to make clear that each communication must be in writing (physical or electronic) and that a written response would be considered timely if it were postmarked within 30 working days or transmitted electronically and received by 11:59:59 p.m. ET on the 30th working day.

Proposed 6 CFR 5.3(c) provided for administrative closure if the requester fails to provide an adequate description of the records sought within 30 days of DHS's request for such a description. A commenter suggested amending this section to provide that an inadequately described request may lose priority in the processing queue until the requester provides an adequate description, but will not be administratively closed. For purposes of placement in the processing queue, an unperfected request (*i.e.* a request that requires additional clarification or other information in order for the agency or component to process the request) is not considered to be in the queue. As a result, the unperfected request has no ''priority'' in the processing queue. Under this rule, DHS will continue to place a request into the queue for processing only after the request is perfected. DHS believes

[3] DHS also received a broad range of supportive comments with respect to a number of the rule's provisions. In the interest of brevity, DHS has not summarized all of the supportive comments below.

that this outcome is the fairest to all requesters, because unperfected requests place a heavy administrative burden on DHS to track and process. A policy to process all such requests would result in a reduction in service for other requesters.

One commenter suggested amending proposed 6 CFR 5.3 to provide that if a requester fails to respond to a request for clarification within 30 days, the agency or component should make an effort to contact the requester using more than one means of communication, before administratively closing the request. The commenter stated that if the requester ultimately responds after the 30-day deadline, DHS should not place the clarified requested at the end of the processing line, but should reopen the request and place it back in the processing queue as though the request had been was perfected on the date when the original request was filed. The commenter stated that this outcome would be consistent with DOJ guidance on ''still interested'' letters. DHS declines to commit to always seeking further clarification following the 30-day deadline. This would be inconsistent with the purpose of the 30-day deadline. And for the reasons described earlier in this preamble, DHS also declines to deem responses perfected retrospectively. DHS notes that DOJ's guidance on ''still interested'' letters is unrelated to agency requests for clarification.[4] DHS also notes that proposed 6 CFR 5.3 does not contain an exhaustive list of reasons for administratively closing a request; for example, a request may be administratively closed at the request of the entity or individual that made the request. Pending requests may also be closed if DHS learns that a requester is deceased.

A commenter suggested that DHS commit to always seek additional information from a requester before administratively closing the request. The commenter stated that this would ensure that FOIA officials do not simply close a request without explanation. DHS recognizes that requesters may have difficulty formulating proper FOIA requests and as such, has provided information and resources to aid requesters in drafting proper FOIA requests. Resources permitting, DHS will attempt to seek additional clarification rather than administratively close requests, but out of fairness to other requesters, in the interest of efficiency, and consistent with its historical practice and the practice of other agencies, DHS will not impose an affirmative requirement to seek additional information or clarification in every instance. DHS has clarified 6 CFR 5.3(c) to this end. DHS notes that it does not administratively close requests without any explanation.

Another commenter proposed to extend the deadline for clarification to 30 business days rather than 30 calendar days. The commenter stated that a 30-business-day deadline would ''conform to the Department of Justice's recommended deadline with respect to 'still-interested' letters.'' DHS agrees with the commenter that 30 working days is more appropriate. DHS has therefore extended the clarification period from 30 calendar days to 30 working days. This has the additional benefit of being consistent with the separate 30-working-day deadline in DOJ's recommended guidelines on still-interested letters.

One commenter suggested amending proposed 6 CFR 5.3(c) to allow for 60 days, rather than 30 days, after a request for clarification and before administrative closure. The commenter stated that the change was necessary because of ''inevitable delays in processing outgoing communications from federal agencies.'' The commenter stated that many journalists are often on assignment without access to physical mail or email for days and weeks at a time, and that ''a 30-day window could unfairly jeopardize the processing of their FOIA requests in the event that a DHS component requests a clarification, requiring them to unnecessarily re-submit requests, and delaying their access to requested records. Extending the response time to 60 days does not impose any additional burden on DHS components, but would assist requesters.'' While DHS recognizes that certain requesters may have some difficulty responding to a request for clarification within a specified time period, in the interest of not creating additional administrative burdens, DHS has determined that the 30-working-day time period established by this rule strikes the appropriate balance. DHS notes that an administrative closure of an unperfected request does not prevent the requester from resubmitting the request at a future date, and that since an unperfected request is by definition not placed in the processing queue, there is no negative impact on a requester with respect to losing their place in the queue if a requester needs to submit a revised request.

A commenter suggested that DHS limit the use of administrative closure to those circumstances described in proposed section 5.3(c), and not administratively close requests based on any other grounds. The commenter specifically stated that DHS sometimes administratively closes cases based on a requester's failure to respond to a ''still interested'' letter, and that the use of still-interested letters ''place[s] a significant an unwarranted burden on FOIA requesters that runs counter to FOIA.'' The commenter also stated that the proposed rule did not include provision for administratively closing a FOIA request based on the requester's failure to respond to a ''still interested'' letter, and suggested that DHS should not introduce new regulatory text on ''still-interested'' letters in the final rule, because the proposal did not afford commenters a sufficient opportunity to comment on this topic. DHS disagrees that it lacks authority to administratively close requests on grounds that are not referenced in its FOIA regulations. For example, although DHS regulations do not provide for the administrative closure of a request at the requester's election, DHS may administratively close such a request. This example is very similar to the use of ''still interested'' letters, described earlier in this preamble.

One commenter suggested that the text of proposed 6 CFR 5.3 be amended to state that when a request is clear on its face that it is being made by an attorney on behalf of a client, no further proof of the attorney-client relationship would be required. The commenter stated that DHS inconsistently requires attorneys for requesters provide documentation of the attorney-client relationship in the form of (1) a signed DHS Form G–28, (2) a signed statement on the letterhead of the entity for which the FOIA request is being made, or (3) a signed statement from the actual requester. The commenter stated that such documentation should not be required where the FOIA request clearly states that it is being made by an attorney on behalf of a client. DHS is unable to make this modification. DHS analyzes third-party requests for records under both the Privacy Act and the FOIA. As part of this process, DHS determines if the records are being sought with the consent of the subject of the records. Without proper documentation, DHS is unable to assess whether a third party, be it an attorney or other representative of the subject of the records, is properly authorized to

[4] A ''still interested'' letter is a letter that the agency sends to a requester if a substantial period of time has elapsed since the time when the request was submitted and is used as a method to make sure that the requester continues to seek the original information. A requester may respond to a ''still interested'' letter by indicating that she or he continues to be interested in the original information sought, seek to modify his or her request, or indicate that he or she is no longer interested in the request.

make a Privacy Act request for the records. Without authorization, DHS applies a balancing test to determine whether the personal privacy interests of the individual outweigh the public interest in disclosure of such records, which may result in a denial of access to third party requests that are not accompanied with proper signed authorization.

3. Comments on Proposed 6 CFR 5.4 (Responsibility for Responding to Requests)

One commenter suggested amending proposed 6 CFR 5.4(d), which pertains to interagency consultations, to clarify the extent to which consultations may also be required with the White House. The commenter stated that ''[t]o promote transparency,'' the final rule should ''address [DHS's] FOIA-related consultations with the Office of White House Counsel.'' Consultations occur on a case-by-case basis and depend on the specific information that may be revealed in a request. Depending on the specific request at issue, DHS and its components consult with entities throughout state, local, and federal government, including the White House. An attempt to catalogue every possible consultation would be impracticable, and would be inconsistent with the overall goal of streamlining the regulations. DHS therefore declines to make this suggested change.

One commenter stated that DHS should always notify the requester of referrals because DHS had not substantiated its claim that merely naming the agency to which a FOIA request had been referred could ''harm an interest protected by an applicable exemption.'' The commenter also stated that proposed 6 CFR 5.4(f) mistakenly referenced referral of records, rather than requests. The commenter stated that ''referrals do not entail referrals of records, but instead implicate requests.'' DHS and its components make every effort to notify requesters when records are referred to other components. A referral differs from a consultation in several ways, but most significantly to the requester, when records are referred to another agency, the receiving agency is the entity that will ordinarily respond directly to the requester unless such a response might compromise a law enforcement or intelligence interest. DHS and its components have a very broad mission space that includes law enforcement and intelligence functions. As such, there may be times when DHS is unable to disclose the referral of records from one component to another or from a DHS component to another agency due to law enforcement and/or intelligence concerns. As such, DHS declines to make this a mandatory requirement.[5] Finally, the reference to ''records'' at the end of proposed 6 CFR 5.4(f) was intentional. In general, when DHS makes a referral to another agency, it is referring responsive records to that agency, rather than referring the request itself without records.

4. Comments on Proposed 6 CFR 5.5(e)(3) and 5.11(b)(6) (Timing of Responses to Requests and Fees, With Respect to News Media)

Five commenters suggested amendments to the proposed language of 6 CFR 5.5(e)(3) and 5.11(b)(6) to make the definition of news media less restrictive. Commenters felt that it would be difficult or cumbersome for certain requesters to establish that news dissemination was their ''primary professional activity.'' In response, DHS has eliminated the requirement in proposed 5.5(e)(3) that a requester seeking expedited processing establish that he or she engages in information dissemination as his or her primary professional activity. DHS has also removed the ''organized and operated'' restriction. These changes are consistent with existing case law.[6]

One commenter also proposed that DHS eliminate the requirement in proposed 6 CFR 5.11(b)(6) that news be broadcast to the ''public at large'' and that periodicals qualify for news media status only if their products are available to the general public. The commenter suggested that the proposed rule should make clear that no particular audience size was required. The reference to the ''public at large'' and the ''general public'' are merely exemplary and do not act as hard-and-fast restrictions. The standard identified in the final rule, as revised in response to public comments, allows DHS to classify a requester as a member of the news media on a case-by-case basis without a rigid requirement of audience size.

One commenter proposed that DHS eliminate the availability of expedited processing for the news media. As the FOIA statute clearly contemplates expedited processing for news media, DHS is unable to eliminate this provision.

5. Comments on Proposed 6 CFR 5.6 (Responses to Requests)

Two commenters requested that the language of proposed 6 CFR 5.6 be amended to include a statement that there is a ''presumption in favor of disclosure.'' The first commenter sought inclusion of the language based upon memoranda issued by the President Obama and Attorney General, respectively.[7] The second commenter also cited the model civil society FOIA rules as the basis for requesting the additional language. DHS operates in accordance with guidance promulgated by the Department of Justice, including Attorney General Holder's 2009 memorandum which urged agencies to ''adopt a presumption in favor of disclosure.'' DHS FOIA regulations are intended to inform and advise the public about DHS operations and procedures for processing FOIA requests. Because proposed 6 CFR 5.6 deals strictly with the administrative steps of processing a FOIA request, and because the Department already adheres to the direction in the memoranda without relying on additional regulatory text, the Department declines to make this suggested change.

One commenter suggested that the regulations specify greater use of electronic means of communication by DHS components to allow the electronic filing of FOIA requests to avoid the delay and uncertainty occasioned by first-class mail. The Department already encourages the electronic filing of FOIA requests and the service is available for all components through the DHS FOIA portal at *www.dhs.gov/steps-file-foia* or through the DHS mobile application (available for both iOS and Android platforms). The Department has incorporated language into 6 CFR 5.6(a) which specifies that DHS components should use electronic means of communicating with requesters whenever practicable.

One commenter proposed changing the language of 6 CFR 5.6(b) to state that DHS will assign a request a tracking number if processing the request would take longer than ten calendar days, rather than ten working days as the proposed rule provided. The commenter stated that the FOIA statute specified ''calendar'' days rather than working

[5] For more information on consultations and referrals, please see the Memorandum from DHS Chief FOIA Office Mary Ellen Callahan to DHS FOIA Officers, DHS Freedom of Information Act Policy Guidance: (1) Processing ''Misdirected'' FOIA Requests; and (2) Implementation of the Department of Justice Office of Information Policy (OIP) December 2011 OIP Guidance: Referrals, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest in Them (Mar. 9, 2012), available at *https://www.dhs.gov/sites/default/files/publications/dhs-foia-handling-guidance_1.pdf.*

[6] *See Cause of Action* v. *FTC,* 799 F.3d 1108 (D.C. Cir. 2015)

[7] *See* 74 FR 4683 (Jan. 26, 2009); Memorandum from the Attorney General to the Heads of Executive Departments and Agencies, The Freedom of Information Act (FOIA) (Mar. 19, 2009), available at *https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf.*

days. The FOIA statute provides only that a tracking number be assigned if the request will take longer than ''ten days'', 5 U.S.C. 552(a)(7)(A), and is silent on the issue of working or calendar days. However, in light of the use of working days to determine the twenty-day time limitations for original responses and responses to appeals (which specify twenty days ''excepting Saturdays, Sundays, and legal public holidays'' 5 U.S.C. 552(a)(6)(A)(i) and (ii)), DHS has also implemented 5 U.S.C. 552(a)(7)(A) using a working days standard. For clarification, working days refers to weekdays (Monday through Friday), and not legal holidays and weekends (Saturday and Sunday).

One commenter suggested that the initial acknowledgment letter contain information on how to file an administrative appeal because if DHS fails to provide a timely response to the FOIA request, a requester is entitled to file an administrative appeal or seek judicial review. The commenter stated that in cases of constructive denial, the requester would not be informed how to administratively appeal the constructive denial. DHS declines to add the appeals language to the initial acknowledgment letter. While DHS acknowledges that in situations of constructive denial, a requester may seek to file an administrative appeal, at the time the initial letter is sent, there is no adverse determination from which to appeal, which may serve to confuse members of the public. In addition. DHS provides information on how to file an appeal on its Web site (*https://www.dhs.gov/foia-appeals-mediation*), and information is always available by contacting the DHS Privacy Office or any of the component FOIA officers via U.S. mail, electronic mail, or by telephone. Contact information for DHS FOIA officers can be found at the following link: *https://www.dhs.gov/foia-contact-information.*

One commenter suggested that proposed 6 CFR 5.6(d) be amended to exclude language that characterizes as an ''adverse determination'' the agency's determination that a ''request does not reasonably describe the records sought.'' The commenter stated that the language would allow DHS components to deny FOIA requests based on inadequate descriptions of records sought, rather than seeking more information from requesters. As provided in proposed 6 CFR 5.3, DHS components try to obtain clarification from requesters by use of ''needs more information'' letters and contacting requesters via telephone or electronic mail to seek additional information. In many, but not all, circumstances the additional information is sufficient to allow DHS to process the request. However, if DHS ultimately administratively closes a request, DHS treats such a closure as an adverse determination from which the requester can seek administrative appeal.

One commenter suggested that proposed 6 CFR 5.6(g) be amended to specifically prohibit DHS from making a ''false'' response to a request when DHS determines that the request falls within 5 U.S.C. 552(c). Section 5.6(g) was intended to provide notice that records determined to be properly subject to an exclusion are not considered to be responsive to the FOIA request because excluded records, by law, ''are not subject to the requirements of [the FOIA].'' 5 U.S.C. 552(c). By definition, when DHS determines that an exclusion under 552(c) applies, any documents would no longer be subject to FOIA and DHS's statement to a requester of such fact could not be considered ''false''. While the commenter would prefer that the agency make a ''Glomar'' response, that is, refuse to confirm or deny the existence of responsive records, the FOIA statutory scheme clearly allows agencies to utilize an exclusion when the situation is appropriate. And as proposed 6 CFR 5.6(g) and 5 U.S.C. 552(c) make clear, once an agency lawfully applies an exclusion, the excluded records are not responsive to the request. Accordingly, DHS is maintaining the language as proposed.

6. Comments on Proposed 6 CFR 5.7 (Confidential Commercial Information)

One commenter suggested that proposed 6 CFR 5.7 be amended to require ''a more detailed notification'' to the requester when the agency denies a FOIA request on the basis of FOIA exemption 4. FOIA exemption 4 protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. The commenter stated that requiring more detail would ''ensure that the requester can properly obtain judicial review.'' DHS already strives to provide as much information as possible to a requester when a request for information is denied. DHS must weigh the requester's need for information against the interests of the submitter of the information; particularly where the information is being withheld as confidential commercial information, it may be impossible for DHS to provide additional information without revealing information that DHS would be required to protect under FOIA Exemption 4. As such, DHS declines to make this suggested change.

Another commenter suggested that DHS revise proposed 6 CFR 5.7(e) and (g) to specify the minimum number of days that will be afforded to submitters to provide comments and file reverse-FOIA lawsuits. The commenter stated that establishing such a standard would prevent the agency from inconsistently interpreting the requirement to provide a ''reasonable'' period of time. DHS agrees that it is appropriate to set a minimum number of days. Accordingly, this final rule specifies that submitters will have a minimum of 10 working days to provide comments. DHS may provide a longer time period, at its discretion. Further, submitters will be given a minimum of 10 working days' notice if information is to be disclosed over their objection. The same commenter also sought clarification of whether ''submitter'' as used in proposed 6 CFR 5.7 was the same as ''business submitter'' as used in proposed 6 CFR 5.12(a). Section 5.12 applies only to CBP operations and should be read independently from 6 CFR 5.7.

7. Comments on Proposed 6 CFR 5.8 (Administrative Appeals)

As noted above, based upon requirements in the FOIA Improvement Act of 2016, DHS has changed the appeals period from 60 working days to 90 working days.

One commenter suggested that proposed 6 CFR 5.8(a)(1) be amended to state that appeals will be considered timely if *delivered* within 60 working days of an adverse determination. An adverse determination can refer to any outcome which the requester seeks to appeal. The commenter stated that the proposed regulations do not specify with enough certainty when the 60 workdays begin to run for purposes of filing an administrative appeal. The proposed rule already considered appeals to be timely if the appeal is postmarked, or transmitted in the case of electronic submissions, within 90 workdays of the date of the component's response. DHS considers the postmark rule to be clear and more favorable to appealing requesters. DHS therefore will not require delivery within 90 days of the notice of an adverse determination. However, in the interests of clarifying the exact time period, DHS has added language to reflect that an electronically transmitted appeal will be considered timely if transmitted to the appeals officer by 11:59:59 p.m. ET or EDT of the 90th working day following the date of an adverse determination on a FOIA request.

An agency commenter suggested that proposed 6 CFR 5.8(c) be amended to clarify that DHS and its components will participate in mediation with the

Office of Government Information Services, National Archives and Records Administration, should a requester elect to mediate any dispute related to a FOIA request. DHS reaffirms its commitment to actively participate in mediation should any FOIA requester seek to resolve a dispute and has added language to this section to reflect such.

One commenter suggested that proposed 6 CFR 5.8(d) be amended to clarify that the time period for response to an appeal may not be extended for greater than 10 days. DHS considers this amendment to be unnecessary as the statute clearly does not provide for extensions beyond a single 10-day period.

One commenter suggested amending proposed 6 CFR 5.8(e) to clarify that judicial review is available without pursuing administrative appeal where a request has been constructively denied through agency inaction. DHS has determined that this proposed change is unnecessary as the FOIA statute itself provides judicial review of constructive denial without the necessity of administrative exhaustion.

8. Comments on Proposed 6 CFR 5.9 (Preservation of Records) or 5.10 (FOIA Requests for Information Contained in a Privacy Act System of Records)

No comments requiring agency response were received regarding proposed 6 CFR 5.9 or 5.10.

9. Comments on Proposed 6 CFR 5.11 (Fees)

Several public submissions contained comments regarding the Department's assessment of fees. As a general matter, the Department notes that the fee provisions are written to conform to the OMB Guidelines, which establish uniform standards for fee matters. Conformity with the OMB Guidelines is required by the FOIA. *See* 5 U.S.C. 552(a)(4)(A)(i).

DHS has revised the ''Definitions'' section of proposed 6 CFR 5.11(b) by inserting the word ''primarily'' before ''commercial interest'' to more accurately conform to the statutory language of the FOIA. Consistent with other provisions of the proposed rule, the change clarifies that fee waivers are available to requesters even if they have a commercial interest as long as the requester can show a public interest in the information and that the primary interest in the information is not commercial.

One commenter suggested that DHS retain the definition of ''commercial use request'' in current 6 CFR 5.11(b)(1) instead of the proposed revisions because the commenter felt that the proposed regulation significantly broadened DHS's discretion in determining whether a request is commercial in nature. The DHS definition of ''commercial use request'' conforms to the definition promulgated by DOJ in its FOIA regulations. DHS has not changed the definition of a commercial request and continues to rely on the same definition in the current interim regulations at 6 CFR 5.11 that ''a commercial use request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which include furthering those interests through litigation.''

The same commenter opposed the removal of the requirement that ''the component shall provide a reasonable opportunity to submit further clarification.'' The proposed changes do not require DHS to seek further clarification from a requester, but rather allow each component to make a case-by-case determination, which may, in the agency's discretion, include seeking further information from the requester regarding the purpose for the request. This change comports with the DHS proposed regulation at 6 CFR 5.3(c), which gives the agency discretion to determine which requests will be the subject of requests for clarification in the event the request is insufficient. Requiring DHS to seek further information would increase the administrative burden on the agency and prejudice other requesters. The final rule text reflects the need to allow components to assess the intended purpose of each request on a case-by-case basis. As such, DHS declines to make any changes to this language.

One commenter suggested that DHS retain the broader definition of ''educational institution'' in current 6 CFR 5.11(b)(4) because the proposed definition of educational institution would exclude students enrolled in educational institutions that make FOIA requests in furtherance of their own research. DHS agrees and has changed the proposed definition of educational institutions to include students seeking FOIA requests to further their own scholarly research by eliminating the example which had excluded such requesters from categorization as educational institutions. The revisions are also consistent with *Sack* v. *Dep't of Defense,* 823 F.3d 687 (D.C. Cir. 2016).

Several commenters sought revision of the definition in proposed 6 CFR 5.11(b)(6) of ''news media.'' This issue is discussed earlier in this preamble, under the section for comments on proposed 6 CFR 5.5.

One commenter suggested amending proposed 6 CFR 5.11(e) to clarify that a non-commercial requester that does not pay fees or declines to pay an estimated fee would still be eligible for two hours of search time without charge. The commenter sought the change because they stated that there was disagreement between agencies about whether or not such requesters would be entitled to the two free hours of search times under such circumstances. DHS has added language to section 5.11(e)(1) to make this more clear; the fee table at proposed 6 CFR 5.11(k)(6) also contains this information.

One commenter suggested that DHS eliminate proposed 6 CFR 5.11(k)(5), concerning the closure of requests where the required advance fee payment has not been received within 30 days. The commenter stated that the requirement of advance payment posed an additional financial barrier to accessing information, particularly in light of DHS's proposed redefinition of educational institutions to exclude students making FOIA requests in furtherance of their own educational coursework. As noted above, DHS has already addressed the concern about students being excluded from the definition of educational request. Regarding the remainder of the commenter's suggestion that DHS eliminate the closure of requests for which the required advance fee payment has not been timely received, DHS declines to make this change. While DHS recognizes that this requirement may impose a burden on some requesters, DHS has a strong interest in maintaining the integrity of the administrative process. As numerous court decisions have noted, government agencies are not required to process requests for free for those requesters that do not qualify for a fee waiver regardless of the requester's ability to pay the estimated fee. Further, the FOIA statute itself allows agencies to collect advance payment of fees when the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250. 5 U.S.C. 552(a)(4)(A)(v).

10. Comments on Proposed 6 CFR 5.12 (Confidential Commercial Information; CBP Procedures)

One commenter stated that the second sentence of proposed 6 CFR 5.12(a) was redundant in that it provided that ''commercial information that CBP [U.S. Customs and Border Protection] determines is privileged or confidential . . . will be treated as privileged or confidential.'' DHS has determined that this language is not redundant because

there may be information that a submitter deems privileged and confidential that does not meet the criteria established by CBP. The text identified by the commenter serves to clarify to submitters that only information that CBP has deemed ''privileged or confidential'' will be treated as such by the agency. The same commenter also sought clarification of whether the term ''business submitter'' used in proposed 6 CFR 5.12 was the same as the definition of ''submitter'' used in proposed 6 CFR 5.7. As DHS noted above in the section covering comments on proposed 6 CFR 5.7, these sections are to be read independently and definitions may not be interchangeable.

11. Other Comments

One commenter stated that he had previously submitted FOIA requests to DHS on behalf of his small business, and that DHS had extended the estimated delivery date of its responses without providing notice or a reason, and that his requests had been sent to the wrong offices and subsequently terminated because found to be duplicative. The commenter asserted, without further elaboration, that delays in FOIA processing imposed direct costs on a small business he represented. The commenter also stated that DHS has a large backlog of FOIA requests. The commenter requested that DHS provide additional economic and small entity analysis related to the costs of FOIA processing delays and the proposed rule, and that ''once these have been completed . . . DHS reopen the comment period for at least 60 days for public comment.'' The commenter stated that ''[i]t is inconceivable that the current backlog has not imposed costs on small and large businesses under this proposal.'' The commenter requested DHS develop an estimate of the quantifiable costs and benefits of the rule and also complete a Regulatory Flexibility Act analysis of the impacts of the rule on small entities. The commenter also submitted two related comments regarding specific interactions he had in submitting FOIA requests to two DHS components, the Transportation Security Administration (TSA), and CBP. Those two comments included a list of eight questions related to the TSA request and 11 questions related to the CBP request, which the commenter requested be addressed in an economic analysis.

Much of the commenter's submission is well outside the scope of the proposed rule, which was intended primarily to update and streamline regulatory text to reflect intervening statutory and other changes. For example, the commenter raised specific issues with previous FOIA requests to DHS components (whether a specific FOIA request was closed properly and changes in a delivery date with another FOIA request). The delay costs associated with past DHS processing of a past FOIA request or the impacts of the current backlog are by definition not due to any changes made in this rule and therefore are not direct costs of this rule. Issues regarding specific pending or historical FOIA requests are more properly addressed to the component's FOIA office and not as comments to the FOIA proposed rule. Regarding the commenter's request for an assessment of the quantified costs and benefits of the rule and a Regulatory Flexibility Act analysis, DHS did consider the costs, benefits and impacts of the proposed rule on small entities. The proposed rule's Executive Orders 12866 and 13563 analysis and Regulatory Flexibility Act both reflect DHS's consideration of the economic impacts of the proposed rule, as well as DHS's conclusion that the proposed rule would not impose additional costs on the public or the government. DHS affirmatively stated that (1) the proposed rule would not collect additional fees compared to current practice or otherwise introduce new regulatory mandates, (2) the benefits of the rule included additional clarity for the public, and (3) regarding the impacts on small entities, the proposed rule did not impose additional direct costs on small entities. See 80 FR 45104 for this discussion of costs, benefits, and small entity impacts. DHS notes the commenter did not identify any specific provisions of the proposed rule that he believed would lead to delays in FOIA processing or otherwise increase costs as compared to FOIA current procedures, or suggest any alternatives to the proposed rule that would result in increased efficiencies. The proposed rule did not invite an open-ended search for any and all potential changes to DHS FOIA regulations that might potentially result in processing improvements; the rule's economic analysis reflects full consideration of the limited changes included in the proposed rule.[8]

[8] Alternatively, to the extent the commenter implies that DHS FOIA regulations are primarily responsible for processing delays, misdirected FOIA requests, or other challenges associated with FOIA processing, DHS finds the commenter's views completely unsupported, and likely incorrect. DHS is unaware of any study of its FOIA processing challenges that cites flaws in existing regulations as a major causal factor. *See http://www.gao.gov/products/GAO-15-82* and *http://www.gao.gov/products/GAO-12-828.*

One commenter suggested that the regulation be amended to allow individuals protected by the confidentiality provisions in the Violence Against Women Act (VAWA) as amended, 42 U.S.C. 13701 and 8 U.S.C. 1367, to submit FOIA requests for their own information without that information subsequently being made public. DHS agrees with the commenter that this sensitive information should not be made public. But DHS believes the commenter's concerns are misplaced, because DHS does not apply the ''release to one, release to all'' policies of FOIA to first-party requests for personal information. DHS will not release to the public information covered by the aforementioned authorities subsequent to a first-party request for that his or her own information.

One commenter suggested that proactive disclosure include automatic disclosure of alien files to individuals in removal proceedings. The Department has determined that automatic disclosure of alien files to all individuals in removal proceedings falls well outside of the scope of the proposed rule and FOIA generally, and therefore will not be addressed here.

Finally, one commenter sought inclusion of a proposed section 5.14, which would require DHS to review records to determine if the release of information contained in records would be in the public interest ''because it is likely to contribute significantly to public understanding of the operations or activities of the DHS.'' As provided in proposed 6 CFR 5.2, DHS already proactively posts certain Department records it determines are of interest to the public. In addition, DHS generally follows the rule that records are publicly posted after the Department has received three requests for such records. DHS also recently participated in a DOJ pilot program which sought to examine the feasibility of posting all requested records as long as no privacy interests were implicated. Proactive review and posting of records, whether they are the subject of FOIA requests or not, is a time and resource intensive undertaking. DHS will continue to examine the feasibility of expanding the public posting of records, but due to practical and operational concerns, cannot divert resources away from the processing of FOIA requests to devote the additional resources that would be required to comply with the scope of proactive posting suggested by this comment. As such, DHS declines to incorporate this proposed new section.

III. Regulatory Analyses

Executive Orders 12866 and 13563—Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

DHS has considered the costs and benefits of this rule. This rule will not introduce new regulatory mandates. In the proposed rule we stated that this rule would not result in additional costs on the public or the government. As explained above, some commenters raised concerns about the potential burden associated with a streamlined process for administratively closing unclear requests, though none offered a quantified estimate of that burden. We continue to believe that DHS's general assessment of the economic impacts of this rule, as stated in the proposed rule, is accurate. DHS does acknowledge that there will be a limited number of cases, however, in which this rule will result in some requesters clarifying *and resubmitting* a request, rather than simply clarifying a request. DHS believes that the burden associated with resubmitting a request would be minimal, because requesters that are required to resubmit requests that lack sufficient information or detail to allow DHS to respond are required to submit the same information as requesters that are required to provide clarification (*i.e.,* information that will supplement the information provided with the original request such that DHS can reasonably identify the records the requester is seeking and process the request). Since both sets of requesters must provide additional information in writing to allow the agency to process their requests, it is difficult to quantify any additional cost associated with resubmission as compared to clarification. The rule's benefits include additional clarity for the public and DHS personnel with respect to DHS's implementation of the FOIA and subsequent statutory amendments.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 note, agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations and local governments). 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. DHS has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. DHS does not believe this rule imposes any additional direct costs on small entities. However, as explained in the previous Executive Orders 12866 and 13563 section, it is possible that an entity that resubmits a request might incur a slightly different impact than one that clarifies a request. Such a cost difference would be so minimal it would be difficult to quantify. DHS further notes that although one commenter stated that he found the proposed rule's regulatory flexibility certification ''challenging,'' no commenter stated the proposed rule would cause a significant economic impact on a substantial number of small entities, or provided any comments suggesting such an impact on a substantial number of small entities. Based on the previous analysis and the comments on the proposed rule, DHS certifies this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

6 CFR Part 5

Classified information, Courts, Freedom of information, Government employees, Privacy.

19 CFR Part 103

Administrative practice and procedure, Confidential business information, Courts, Freedom of information, Law enforcement, Privacy, Reporting and recordkeeping requirements.

44 CFR Part 5

Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, the Department of Homeland Security amends 6 CFR chapter I, part 5, 19 CFR chapter I, part 103, and 44 CFR chapter I, part 5, as follows:

Title 6—Domestic Security

PART 5—DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority citation for part 5 is revised to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 301; 6 U.S.C. 101 *et seq.;* E.O. 13392.

■ 2. Revise subpart A of part 5 to read as follows:

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.

5.1 General provisions.
5.2 Proactive disclosures of DHS records.
5.3 Requirements for making requests.
5.4 Responsibility for responding to requests.
5.5 Timing of responses to requests.
5.6 Responses to requests.
5.7 Confidential commercial information.
5.8 Administrative appeals.
5.9 Preservation of records.
5.10 FOIA requests for information contained in a Privacy Act system of records.
5.11 Fees.
5.12 Confidential commercial information; CBP procedures.
5.13 Other rights and services.
Appendix I to Subpart A—FOIA Contact Information

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 5.1 General provisions.

(a)(1) This subpart contains the rules that the Department of Homeland Security follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 as amended.

(2) The rules in this subpart should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (March 27, 1987) (hereinafter ''OMB Guidelines''). Additionally, DHS has additional policies and procedures relevant to the FOIA process. These resources are available at *http://www.dhs.gov/freedom-information-act-foia.* Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under subpart B of part 5 as well as under this subpart.

(b) As referenced in this subpart, component means the FOIA office of each separate organizational entity within DHS that reports directly to the Office of the Secretary.

(c) DHS has a decentralized system for processing requests, with each component handling requests for its records.

(d) *Unofficial release of DHS information.* The disclosure of exempt records, without authorization by the appropriate DHS official, is not an official release of information; accordingly, it is not a FOIA release. Such a release does not waive the authority of the Department of Homeland Security to assert FOIA exemptions to withhold the same records in response to a FOIA request. In addition, while the authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

§ 5.2 Proactive disclosure of DHS records.

Records that are required by the FOIA to be made available for public inspection in an electronic format are accessible on DHS's Web site, *http://www.dhs.gov/freedom-information-act-foia-and-privacy-act.* Each component is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each component shall ensure that posted records and indices are updated on an ongoing basis. Each component has a FOIA Public Liaison who can assist individuals in locating records particular to a component. A list of DHS's FOIA Public Liaisons is available at *http://www.dhs.gov/foia-contact-information* and in appendix I to this subpart. Requesters who do not have access to the internet may contact the Public Liaison for the component from which they seek records for assistance with publicly available records.

§ 5.3 Requirements for making requests.

(a) *General information.* (1) DHS has a decentralized system for responding to FOIA requests, with each component designating a FOIA office to process records from that component. All components have the capability to receive requests electronically, either through email or a web portal. To make a request for DHS records, a requester should write directly to the FOIA office of the component that maintains the records being sought. A request will receive the quickest possible response if it is addressed to the FOIA office of the component that maintains the records sought. DHS's FOIA Reference Guide contains or refers the reader to descriptions of the functions of each component and provides other information that is helpful in determining where to make a request. Each component's FOIA office and any additional requirements for submitting a request to a given component are listed in Appendix I of this subpart. These references can all be used by requesters to determine where to send their requests within DHS.

(2) A requester may also send his or her request to the Privacy Office,

U.S. Department of Homeland Security, 245 Murray Lane SW STOP–0655, or via the internet at *http://www.dhs.gov/dhs-foia-request-submission-form,* or via fax to (202) 343–4011. The Privacy Office will forward the request to the component(s) that it determines to be most likely to maintain the records that are sought.

(3) A requester who is making a request for records about him or herself must comply with the verification of identity provision set forth in subpart B of this part.

(4) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual, in compliance with the verification of identity provision set forth in subpart B of this part, or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual, authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary). As an exercise of its administrative discretion, each component can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* Requesters must describe the records sought in sufficient detail to enable DHS personnel to locate them with a reasonable amount of effort. A reasonable description contains sufficient information to permit an organized, non-random search for the record based on the component's filing arrangements and existing retrieval systems. To the extent possible, requesters should include specific information that may assist a component in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. Requesters should refer to Appendix I of this subpart for additional component-specific requirements. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking. Before submitting their requests, requesters may contact the component's FOIA Officer or FOIA public liaison to discuss the records they are seeking and to receive assistance in describing the records. If after receiving a request, a component determines that it does not reasonably describe the records sought, the component should inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the component's designated FOIA Officer, its FOIA Public Liaison, or a representative of the DHS Privacy Office, each of whom is available to assist the requester in reasonably describing the records sought.

(c) If a request does not adequately describe the records sought, DHS may at its discretion either administratively close the request or seek additional information from the requester. Requests for clarification or more information will be made in writing (either via U.S. mail or electronic mail whenever possible). Requesters may respond by U.S. Mail or by electronic mail regardless of the method used by DHS to transmit the request for additional information. In order to be

considered timely, responses to requests for additional information must be postmarked or received by electronic mail within 30 working days of the postmark date or date of the electronic mail request for additional information or received by electronic mail by 11:59:59 p.m. ET on the 30th working day. If the requester does not respond to a request for additional information within thirty (30) working days, the request may be administratively closed at DHS's discretion. This administrative closure does not prejudice the requester's ability to submit a new request for further consideration with additional information.

§ 5.4 Responsibility for responding to requests.

(a) *In general.* Except in the instances described in paragraphs (c) and (d) of this section, the component that first receives a request for a record and maintains that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the component shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), shall not be considered responsive to a request.

(b) *Authority to grant or deny requests.* The head of a component, or designee, is authorized to grant or to deny any requests for records that are maintained by that component.

(c) *Re-routing of misdirected requests.* Where a component's FOIA office determines that a request was misdirected within DHS, the receiving component's FOIA office shall route the request to the FOIA office of the proper component(s).

(d) *Consultations, coordination and referrals.* When a component determines that it maintains responsive records that either originated with another component or agency, or which contains information provided by, or of substantial interest to, another component or agency, then it shall proceed in accordance with either paragraph (d)(1), (2), or (3) of this section, as appropriate:

(1) The component may respond to the request, after consulting with the component or the agency that originated or has a substantial interest in the records involved.

(2) The component may respond to the request after coordinating with the other components or agencies that originated the record. This may include situations where the standard referral procedure is not appropriate where disclosure of the identity of the component or agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement component responding to a request for records on a living third party locates records within its files originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if a component locates material within its files originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the component that received the request should coordinate with the originating component or agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the component that originally received the request.

(3) The component may refer the responsibility for responding to the request or portion of the request to the component or agency best able to determine whether to disclose the relevant records, or to the agency that created or initially acquired the record as long as that agency is subject to the FOIA. Ordinarily, the component or agency that created or initially acquired the record will be presumed to be best able to make the disclosure determination. The referring component shall document the referral and maintain a copy of the records that it refers.

(e) *Classified information.* On receipt of any request involving classified information, the component shall determine whether information is currently and properly classified and take appropriate action to ensure compliance with 6 CFR part 7. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another component or agency under any applicable executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, or should consider the information for classification. Whenever a component's record contains information classified by another component or agency, the component shall coordinate with or refer the responsibility for responding to that portion of the request to the component or agency that classified the underlying information.

(f) *Notice of referral.* Whenever a component refers any part of the responsibility for responding to a request to another component or agency, it will notify the requester of the referral and inform the requester of the name of each component or agency to which the records were referred, unless disclosure of the identity of the component or agency would harm an interest protected by an applicable exemption, in which case the component should coordinate with the other component or agency, rather than refer the records.

(g) *Timing of responses to consultations and referrals.* All consultations and referrals received by DHS will be handled according to the date that the FOIA request initially was received by the first component or agency, not any later date.

(h) *Agreements regarding consultations and referrals.* Components may establish agreements with other components or agencies to eliminate the need for consultations or referrals with respect to particular types of records.

(i) *Electronic records and searches*–(1) *Significant interference.* The FOIA allows components to not conduct a search for responsive documents if the search would cause significant interference with the operation of the component's automated information system.

(2) *Business as usual approach.* A ''business as usual'' approach exists when the component has the capability to process a FOIA request for electronic records without a significant expenditure of monetary or personnel resources. Components are not required to conduct a search that does not meet this business as usual criterion.

(i) Creating computer programs or purchasing additional hardware to extract email that has been archived for emergency retrieval usually are not considered business as usual if extensive monetary or personnel resources are needed to complete the project.

(ii) Creating a computer program that produces specific requested fields or records contained within a well-defined database structure usually is considered

business as usual. The time to create this program is considered as programmer or operator search time for fee assessment purposes and the FOIA requester may be assessed fees in accordance with § 5.11(c)(1)(iii). However, creating a computer program to merge files with disparate data formats and extract specific elements from the resultant file is not considered business as usual, but a special service, for which additional fees may be imposed as specified in § 5.11. Components are not required to perform special services and creation of a computer program for a fee is up to the discretion of the component and is dependent on component resources and expertise.

(3) *Data links.* Components are not required to expend DHS funds to establish data links that provide real time or near-real-time data to a FOIA requester.

§ 5.5 Timing of responses to requests.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt. Appendix I to this subpart contains the list of components that are designated to accept requests. In instances involving misdirected requests that are re-routed pursuant to § 5.4(c), the response time will commence on the date that the request is received by the proper component, but in any event not later than ten working days after the request is first received by any DHS component designated in appendix I of this subpart.

(b) *Multitrack processing.* All components must designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. A component may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors a component may consider are the number of pages involved in processing the request or the need for consultations or referrals. Components shall advise requesters of the track into which their request falls, and when appropriate, shall offer requesters an opportunity to narrow their request so that the request can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the statutory time limits for processing a request cannot be met because of ''unusual circumstances,'' as defined in the FOIA, and the component extends the time limits on that basis, the component shall, before expiration of the twenty-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds ten working days, the component shall, as described by the FOIA, provide the requester with an opportunity to modify the request or agree to an alternative time period for processing. The component shall make available its designated FOIA Officer and its FOIA Public Liaison for this purpose. The component shall also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services.

(d) *Aggregating requests.* For the purposes of satisfying unusual circumstances under the FOIA, components may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Components will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) Requests and appeals will be processed on an expedited basis whenever the component determines that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

(2) A request for expedited processing may be made at any time. Requests based on paragraphs (e)(1)(i), (ii), and (iii) of this section must be submitted to the component that maintains the records requested. When making a request for expedited processing of an administrative appeal, the request should be submitted to the DHS Office of General Counsel or the component Appeals Officer. Address information is available at the DHS Web site, *http://www.dhs.gov/freedom-information-act-foia,* or by contacting the component FOIA officers via the information listed in Appendix I. Requests for expedited processing that are based on paragraph (e)(1)(iv) of this section must be submitted to the Senior Director of FOIA Operations, the Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW STOP–0655, Washington, DC 20598–0655. A component that receives a misdirected request for expedited processing under the standard set forth in paragraph (e)(1)(iv) of this section shall forward it immediately to the DHS Senior Director of FOIA Operations, the Privacy Office, for determination. The time period for making the determination on the request for expedited processing under paragraph (e)(1)(iv) of this section shall commence on the date that the Privacy Office receives the request, provided that it is routed within ten working days, but in no event shall the time period for making a determination on the request commence any later than the eleventh working day after the request is received by any component designated in appendix I of this subpart.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that he or she is a person who primarily engages in information dissemination, though it need not be his or her sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful to establishing the requirement that there be an ''urgency to inform'' the public on the topic. As a matter of administrative discretion, a component may waive the formal certification requirement.

(4) A component shall notify the requester within ten calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 5.6 Responses to requests.

(a) *In general.* Components should, to the extent practicable, communicate with requesters having access to the

Internet using electronic means, such as email or web portal.

(b) *Acknowledgments of requests.* A component shall acknowledge the request and assign it an individualized tracking number if it will take longer than ten working days to process. Components shall include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Grants of requests.* Ordinarily, a component shall have twenty (20) working days from when a request is received to determine whether to grant or deny the request unless there are unusual or exceptional circumstances. Once a component makes a determination to grant a request in full or in part, it shall notify the requester in writing. The component also shall inform the requester of any fees charged under § 5.11 and shall disclose the requested records to the requester promptly upon payment of any applicable fees. The component shall inform the requester of the availability of its FOIA Public Liaison to offer assistance.

(d) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees, including requester categories or fee waiver matters, or denials of requests for expedited processing.

(e) *Content of denial.* The denial shall be signed by the head of the component, or designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the component in denying the request;

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation. This estimation is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under § 5.8(a), and a description of the requirements set forth therein.

(5) A statement notifying the requester of the assistance available from the agency's FOIA Public Liaison and the dispute resolution services offered by OGIS.

(f) *Markings on released documents.* Markings on released documents must be clearly visible to the requester. Records disclosed in part shall be marked to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record, if technically feasible.

(g) *Use of record exclusions.* (1) In the event that a component identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the head of the FOIA office of that component must confer with Department of Justice's Office of Information Policy (OIP) to obtain approval to apply the exclusion.

(2) Any component invoking an exclusion shall maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

§ 5.7 Confidential commercial information.

(a) *Definitions*—(1) *Confidential commercial information* means commercial or financial information obtained by DHS from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from whom DHS obtains confidential commercial information, directly or indirectly.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* (1) A component shall promptly provide written notice to a submitter whenever records containing such information are requested under the FOIA if, after reviewing the request, the responsive records, and any appeal by the requester, the component determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The component has a reason to believe that the requested information may be protected from disclosure under Exemption 4.

(2) The notice shall either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(d) *Exceptions to submitter notice requirements.* The notice requirements of paragraphs (c) and (g) of this section shall not apply if:

(1) The component determines that the information is exempt under the FOIA;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous, except that, in such a case, the component shall give the submitter written notice of any final decision to disclose the information and must provide that notice within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* (1) A component will specify a reasonable time period, but no fewer than 10 working days, within which the submitter must respond to the notice referenced above. If a submitter has any objections to disclosure, it should provide the component a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret, or commercial or financial information that is privileged or confidential.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no

objection to disclosure of the information. Information received by the component after the date of any disclosure decision will not be considered by the component. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever a component decides to disclose information over the objection of a submitter, the component shall provide the submitter written notice, which shall include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice, but no fewer than 10 working days.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component shall promptly notify the submitter.

(i) *Requester notification.* The component shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

(j) *Scope.* This section shall not apply to any confidential commercial information provided to CBP by a business submitter. Section 5.12 applies to such information. Section 5.12 also defines ''confidential commercial information'' as used in this paragraph.

§ 5.8 Administrative appeals.

(a) *Requirements for filing an appeal.* (1) A requester may appeal adverse determinations denying his or her request or any part of the request to the appropriate Appeals Officer. A requester may also appeal if he or she questions the adequacy of the component's search for responsive records, or believes the component either misinterpreted the request or did not address all aspects of the request (*i.e.,* it issued an incomplete response), or if the requester believes there is a procedural deficiency (*e.g.,* fees were improperly calculated). For the address of the appropriate component Appeals Officer, contact the applicable component FOIA liaison using the information in appendix I to this subpart, visit *www.dhs.gov/foia,* or call 1–866–431–0486. An appeal must be in writing, and to be considered timely it must be postmarked or, in the case of electronic submissions, transmitted to the Appeals Officer within 90 working days after the date of the component's response. An electronically filed appeal will be considered timely if transmitted to the Appeals Officer by 11:59:59 p.m. ET or EDT on the 90th working day. The appeal should clearly identify the component determination (including the assigned request number if the requester knows it) that is being appealed and should contain the reasons the requester believes the determination was erroneous. To facilitate handling, the requester should mark both the letter and the envelope, or the transmittal line in the case of electronic transmissions ''Freedom of Information Act Appeal.''

(2) An adverse determination by the component appeals officer will be the final action of DHS.

(b) *Adjudication of appeals.* (1) The DHS Office of the General Counsel or its designee (*e.g.,* component Appeals Officers) is the authorized appeals authority for DHS;

(2) On receipt of any appeal involving classified information, the Appeals Officer shall consult with the Chief Security Officer, and take appropriate action to ensure compliance with 6 CFR part 7;

(3) If the appeal becomes the subject of a lawsuit, the Appeals Officer is not required to act further on the appeal.

(c) *Appeal decisions.* The decision on the appeal will be made in writing. A decision that upholds a component's determination will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services, of the National Archives and Records Administration, as a non-exclusive alternative to litigation. Should the requester elect to mediate any dispute related to the FOIA request with the Office of Government Information Services, DHS and its components will participate in the mediation process in good faith. If the adverse decision is reversed or modified on appeal, in whole or in part, the requester will be notified in a written decision and the request will be thereafter be further processed in accordance with that appeal decision.

(d) *Time limit for issuing appeal decision.* The statutory time limit for responding to appeals is generally 20 working days after receipt. However, the Appeals Officer may extend the time limit for responding to an appeal provided the circumstances set forth in 5 U.S.C. 552(a)(6)(B)(i) are met.

(e) *Appeal necessary before seeking court review.* If a requester wishes to seek court review of a component's adverse determination on a matter appealable under paragraph (a)(1) of this section, the requester must generally first appeal it under this subpart. However, a requester is not required to first file an appeal of an adverse determination of a request for expedited processing prior to seeking court review.

§ 5.9 Preservation of records.

Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 and/or 14 of the National Archives and Records Administration. Records will not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 5.10 FOIA requests for information contained in a Privacy Act system of records.

(a) *Information subject to Privacy Act.* (1) If a requester submits a FOIA request for information about him or herself that is contained in a Privacy Act system of records applicable to the requester (*i.e.,* the information contained in the system of records is retrieved by the component using the requester's name or other personal identifier, and the information pertains to an individual covered by the Privacy Act) the request will be processed under both the FOIA and the Privacy Act.

(2) If the information the requester is seeking is not subject to the Privacy Act (*e.g.,* the information is filed under another subject, such as an organization, activity, event, or an investigation not retrievable by the requester's name or personal identifier), the request, if otherwise properly made, will be treated only as a FOIA request. In addition, if the information is covered by the Privacy Act and the requester does not provide proper verification of the requester's identity, the request, if otherwise properly made, will be processed only under the FOIA.

(b) *When both Privacy Act and FOIA exemptions apply.* Only if both a Privacy Act exemption and a FOIA

exemption apply can DHS withhold information from a requester if the information sought by the requester is about him or herself and is contained in a Privacy Act system of records applicable to the requester.

(c) *Conditions for release of Privacy Act information to third parties in response to a FOIA request.* If a requester submits a FOIA request for Privacy Act information about another individual, the information will not be disclosed without that person's prior written consent that provides the same verification information that the person would have been required to submit for information about him or herself, unless—

(1) The information is required to be released under the FOIA, as provided by 5 U.S.C. 552a (b)(2); or

(2) In most circumstances, if the individual is deceased.

(d) *Privacy Act requirements.* See DHS's Privacy Act regulations in 5 CFR part 5, subpart B for additional information regarding the requirements of the Privacy Act.

§ 5.11 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. Components will ordinarily use the most efficient and least expensive method for processing requested records. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional information. A component ordinarily will collect all applicable fees before sending copies of records to a requester. If you make a FOIA request, it shall be considered a firm commitment to pay all applicable fees charged under § 5.11, up to $25.00, unless you seek a waiver of fees. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* Generally, ''requester category'' means one of the three categories in which agencies place requesters for the purpose of determining whether a requester will be charged fees for search, review and duplication; categories include commercial requesters, noncommercial scientific or educational institutions or news media requesters, and all other requesters. The term ''fee waiver'' means that processing fees will be waived, or reduced, if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a primarily commercial interest. For purposes of this section:

(1) *Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. A component's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

(2) *Direct costs* are those expenses that an agency expends in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. Components may seek verification from the requester that the request is in furtherance of scholarly research.

Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution if the request adequately describes how the requested information would further a specific research goal of the educational institution.

Example 2. A request from the same professor of geology seeking immigration information from the U.S. Immigration and Customs Enforcement in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

Example 3. A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

Note: These examples are provided for guidance purposes only. Each individual request will be evaluated under the particular facts, circumstances, and information provided by the requester.

(5) *Noncommercial scientific institution* is an institution that is not operated on a ''commercial'' basis, as defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(6) *Representative of the news media* is any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast ''news'' to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including but not limited to, news organizations that disseminate solely on the Internet. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. In contrast, data brokers or others who merely compile and market government information for direct economic return shall not be presumed to be news media entities. ''Freelance'' journalists must demonstrate a solid basis for expecting publication through a news media entity in order to be considered as working for a news media entity. A publication contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination.

(7) *Review* is the page-by-page, line-by-line examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining

and considering any formal objection to disclosure made by a confidential commercial information submitter under § 5.7 or § 5.12, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible by readily available means.

(c) *Charging fees.* In responding to FOIA requests, components shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section. Because the fee amounts provided below already account for the direct costs associated with a given fee type, unless otherwise stated in § 5.11, components should not add any additional costs to those charges.

(1) *Search.* (i) Search fees shall be charged for all requests subject to the restrictions of paragraph (d) of this section. Components may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be as follows: Managerial—$10.25; professional—$7.00; and clerical/administrative—$4.00.

(iii) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new computer program, as referenced in section 5.4, to locate the requested records. Requesters shall be notified of the costs associated with creating such a program and must agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by an agency at a federal records center operated by the National Archives and Records Administration (NARA), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the restrictions of paragraph (d) of this section. A component shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the component in the form or format requested. Where photocopies are supplied, the component will provide one copy per request at a cost of ten cents per page. For copies of records produced on tapes, disks, or other media, components will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, components will charge the direct costs.

(3) *Review.* Review fees will be charged to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.,* the review conducted by a component to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, when the appellate authority determines that a particular exemption no longer applies, any costs associated with a component's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Restrictions on charging fees.* (1) No search fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media, unless the records are sought for a commercial use.

(2) If a component fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees, except as described in (d)(2)(i) through (iii).

(i) If a component has determined that unusual circumstances as defined by the FOIA apply and the component provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(ii) If a component has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, a component may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees, if the following steps are taken. The component must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the component must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5. U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the component may charge all applicable fees incurred in the processing of the request.

(iii) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (c) of this section is $14.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of $25.00.* (1) When a component determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review and/or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester accordingly. If the requester is a noncommercial use requester, the notice will specify that the requester is entitled to his or her statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and will advise the requester whether those entitlements have been provided. Two hours of search time will be provided free of charge to non-commercial requesters regardless of whether they agree to pay estimated fees.

(2) In cases in which a requester has been notified that the actual or estimated fees are in excess of $25.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees he or she is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with his or her statutory entitlements, designates that he or she seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. Components are not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component will toll the processing of the request while it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The component shall inquire whether the requester wishes to revise the amount of fees he or she is willing to pay and/or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) Components will make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if a component chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, components will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, a component shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.,* payment before copies are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. A component may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component or agency within 30 calendar days of the billing date, a component may require that the requester pay the full amount due, plus any applicable interest on that prior request and the component may require that the requester make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request or any pending appeal. Where a component has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which a component requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the component's fee determination, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the component will inform the requester of the contact information for that source.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a reduced rate below that established under paragraph (c) of this section, where a component determines, on a case-by-case basis, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, components will consider the following factors:

(i) The subject of the request must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as his or her ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question must be enhanced by

the disclosure to a significant extent. However, components shall not make value judgments about whether the information at issue is ''important'' enough to be made public.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components will consider the following factors:

(i) Components shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. Components ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received.

(6) *Summary of fees.* The following table summarizes the chargeable fees (excluding direct fees identified in § 5.11) for each requester category.

Category	Search fees	Review fees	Duplication fees
Commercial-use	Yes	Yes	Yes.
Educational or Non-Commercial Scientific Institution	No	No	Yes (100 pages free).
News Media	No	No	Yes (100 pages free).
Other requesters	Yes (2 hours free)	No	Yes (100 pages free).

§ 5.12 Confidential commercial information; CBP procedures.

(a) *In general.* For purposes of this section, ''commercial information'' is defined as trade secret, commercial, or financial information obtained from a person. Commercial information provided to CBP by a business submitter and that CBP determines is privileged or confidential commercial or financial information will be treated as privileged or confidential and will not be disclosed pursuant to a Freedom of Information Act request or otherwise made known in any manner except as provided in this section.

(b) *Notice to business submitters of FOIA requests for disclosure.* Except as provided in paragraph (b)(2) of this section, CBP will provide business submitters with prompt written notice of receipt of FOIA requests or appeals that encompass their commercial information. The written notice will describe either the exact nature of the commercial information requested, or enclose copies of the records or those portions of the records that contain the commercial information. The written notice also will advise the business submitter of its right to file a disclosure objection statement as provided under paragraph (c)(1) of this section. CBP will provide notice to business submitters of FOIA requests for the business submitter's commercial information for a period of not more than 10 years after the date the business submitter provides CBP with the information, unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(1) *When notice is required.* CBP will provide business submitters with notice of receipt of a FOIA request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially- or financially-sensitive information. The business submitter's claim of confidentiality should be supported by a statement by an authorized representative of the business entity providing specific justification that the information in question is considered confidential commercial or financial information and that the information has not been disclosed to the public; or

(ii) CBP has reason to believe that disclosure of the commercial information could reasonably be expected to cause substantial competitive harm.

(2) *When notice is not required.* The notice requirements of this section will not apply if:

(i) CBP determines that the commercial information will not be disclosed;

(ii) The commercial information has been lawfully published or otherwise made available to the public; or

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(c) *Procedure when notice given.* (1) *Opportunity for business submitter to object to disclosure.* A business submitter receiving written notice from CBP of receipt of a FOIA request or appeal encompassing its commercial information may object to any disclosure of the commercial information by providing CBP with a detailed statement of reasons within 10 days of the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays). The statement should specify all the grounds for withholding any of the commercial information under any exemption of the FOIA and, in the case of Exemption 4, should demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. The disclosure objection information provided by a person pursuant to this paragraph may be subject to disclosure under the FOIA.

(2) *Notice to FOIA requester.* When notice is given to a business submitter under paragraph (b)(1) of this section, notice will also be given to the FOIA requester that the business submitter has been given an opportunity to object to any disclosure of the requested commercial information.

(d) *Notice of intent to disclose.* CBP will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose commercial information. Whenever CBP decides to disclose the requested commercial information over the objection of the business submitter, CBP will provide written notice to the business submitter of CBP's intent to disclose, which will include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the commercial information to be disclosed; and

(3) A specified disclosure date which will not be less than 10 days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of intent to disclose the requested information has been issued to the business submitter. Except as otherwise prohibited by law, CBP will also provide a copy of the notice of intent to disclose to the FOIA requester at the same time.

(e) *Notice of FOIA lawsuit.* Whenever a FOIA requester brings suit seeking to compel the disclosure of commercial information covered by paragraph (b)(1) of this section, CBP will promptly notify the business submitter in writing.

§ 5.13 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Appendix I to Subpart A—FOIA Contact Information

Department of Homeland Security Chief FOIA Officer

Chief Privacy Officer/Chief FOIA Officer, The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP–0655, Washington, DC. 20528–0655

Department of Homeland Security Deputy Chief FOIA Officer

Deputy Chief FOIA Officer, The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP–0655, Washington, DC 20528–0655

Senior Director, FOIA Operations

Sr. Director, FOIA Operations, The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP–0655, Washington, DC 20528–0655, Phone: 202–343–1743 or 866–431–0486, Fax: 202–343–4011, Email: *foia@hq.dhs.gov*

Director, FOIA Production and Quality Assurance

Public Liaison, FOIA Production and Quality Assurance, The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP–0655, Washington, DC 20528–0655, Phone: 202–343–1743 or 866–431–0486, Fax: 202–343–4011, Email: *foia@hq.dhs.gov*

U.S. Customs & Border Protection (CBP)

FOIA Officer/Public Liaison, 90 K Street NE., 9th Floor, Washington, DC 20229–1181, Phone: 202–325–0150, Fax: 202–325–0230

Office of Civil Rights and Civil Liberties (CRCL)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202–357–1218, Email: *CRCL@dhs.gov*

Federal Emergency Management Agency (FEMA)

FOIA Officer/Public Liaison, 500 C Street SW., Room 7NE, Washington, DC 20472, Phone: 202–646–3323, Email: *fema-foia@dhs.gov*

Federal Law Enforcement Training Center (FLETC)

FOIA Officer/Public Liaison, Building #681, Suite 187B, Glynco, GA 31524, Phone: 912–267–3103, Fax: 912–267–3113, Email: *fletc-foia@dhs.gov*

National Protection and Programs Directorate (NPPD)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 703–235–2211, Fax: 703–235–2052, Email: *NPPD.FOIA@dhs.gov*

Office of Biometric Identity Management (OBIM) FOIA Officer, Department of Homeland Security, Washington, DC 20598–0628, Phone: 202–298–5454, Fax: 202–298–5445, E-Mail: *OBIM–FOIA@ice.dhs.gov*

Office of Intelligence & Analysis (I&A)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202–447–4883, Fax: 202–612–1936, Email: *I&AFOIA@hq.dhs.gov*

Office of Inspector General (OIG)

FOIA Public Liaison, DHS–OIG Counsel, STOP 0305, 245 Murray Lane SW., Washington, DC 20528–0305, Phone: 202–254–4001, Fax: 202–254–4398, Email: *FOIA.OIG@oig.dhs.gov*

Office of Operations Coordination and Planning (OPS)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202–447–4156, Fax: 202–282–9811, Email: *FOIAOPS@DHS.GOV*

Science & Technology Directorate (S&T)

FOIA Officer/Public Liaison, U.S. Department of Homeland Security, Washington, DC 20528, Phone: 202–254–6342, Fax: 202–254–6739, Email: *stfoia@hq.dhs.gov*

Transportation Security Administration (TSA)

FOIA Officer/Public Liaison, Freedom of Information Act Branch, 601 S. 12th Street, 11th Floor, East Tower, TSA–20, Arlington, VA 20598–6020, Phone: 1–866–FOIA–TSA or 571–227–2300, Fax: 571–227–1406, Email: *foia.tsa@dhs.gov*

U.S. Citizenship & Immigration Services (USCIS)

FOIA Officer/Public Liaison, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, Mo. 64064–8010, Phone: 1–800–375–5283 (USCIS National Customer Service Unit), Fax: 816–350–5785, Email: *uscis.foia@uscis.dhs.gov*

United States Coast Guard (USCG)

Commandant (CG–611), 2100 2nd St., SW., Attn: FOIA Officer/Public Liaison, Washington, DC 20593–0001, FOIA Requester Service Center Contact: Amanda Ackerson, Phone: 202–475–3522, Fax: 202–475–3927, Email: *efoia@uscg.mil*

United States Immigration & Customs Enforcement (ICE)

Freedom of Information Act Office, FOIA Officer/Public Liaison 500 12th Street, SW., Stop 5009, Washington, DC 20536–5009,

FOIA Requester Service Center Contact, Phone: 866–633–1182, Fax: 202–732–4265, Email: *ice-foia@dhs.gov*

United States Secret Service (USSS)

Freedom of Information and Privacy Acts Branch, FOIA Officer/Public Liaison, 245 Murray Drive, Building 410, Washington, DC 20223, Phone: 202–406–6370, Fax: 202–406–5586, Email: *FOIA@usss.dhs.gov*

Please direct all requests for information from the Office of the Secretary, Citizenship and Immigration Services Ombudsman, Domestic Nuclear Detection Office, Office of the Executive Secretary, Office of Intergovernmental Affairs, Management Directorate, Office of Policy, Office of the General Counsel, Office of Health Affairs, Office of Legislative Affairs, Office of Public Affairs and the Privacy Office, to the DHS Privacy Office at:

The Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW., STOP–0655, Washington, DC 20528–0655, Phone: 202–343–1743 or 866–431–0486, Fax: 202–343–4011, Email: *foia@hq.dhs.gov*

Appendix B to Part 5—[Removed and Reserved]

■ 3. Remove and reserve appendix B to part 5.

Title 19—Customs Duties

PART 103—AVAILABILITY OF INFORMATION

■ 4. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 103.31 also issued under 19 U.S.C. 1431;

Section 103.31a also issued under 19 U.S.C. 2071 note and 6 U.S.C. 943;

Section 103.33 also issued under 19 U.S.C. 1628;

Section 103.34 also issued under 18 U.S.C. 1905.

§ 103.35 [Removed]

■ 5. Remove § 103.35.

Title 44—Emergency Management and Assistance

PART 5—PRODUCTION OR DISCLOSURE OF INFORMATION

■ 6. The authority citation for part 5 is revised to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301.

Subparts A through E—[Removed and Reserved]

■ 7. Remove and reserve subparts A through E of part 5.

■ 8. Revise § 5.86 to read as follows:

§ 5.86 Records involved in litigation or other judicial process.

Subpoenas duces tecum issued pursuant to litigation or any other adjudicatory proceeding in which the United States is a party shall be referred to the Chief Counsel.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2016–28095 Filed 11–21–16; 8:45 am]

BILLING CODE 9110–9L–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 309

RIN 3064–AE53

Revision of the FDIC's Freedom of Information Act Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interim final rule and request for comment.

SUMMARY: This rule amends the Federal Deposit Insurance Corporation's (FDIC) regulations under the Freedom of Information Act (FOIA) to incorporate certain changes made to the FOIA by the FOIA Improvement Act of 2016 (FOIA Improvement Act). In addition, this rule amends certain provisions to reflect changes brought about by prior amendments to the FOIA that had been incorporated into agency practice and corrects inaccurate contact information and adjusts numbering and lettering of current provisions because of additions to the regulations.

DATES: This rule is effective November 22, 2016. Comments must be submitted by January 23, 2017.

ADDRESSES: You may submit written comments, which must include the agency name and RIN 3064–AE53, by one of the following methods:

- *Agency Web site: www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the Agency Web site.
- *Email: Comments@fdic.gov.* Include ''Disclosure of Information'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, or by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Hugo Zia, Supervisory Counsel, FDIC, FOIA/Privacy Act Group, Legal Division, at *hzia@fdic.gov* or (703) 562–2671; or John Elmore, Counsel, FDIC, FOIA/Privacy Act Group, Legal Division, at *joelmore@fdic.gov* or (703) 562–2047; or Sarah Jirousek, Counsel, FDIC, FOIA/Privacy Act Group, Legal Division, at *sjirousek@fdic.gov* or (703) 562–2125.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The policy objective of this interim final rule is to bring the FDIC's FOIA regulations [1] into accord with the changes to the FOIA made by the FOIA Improvement Act,[2] the OPEN Government Act,[3] and the OPEN FOIA Act.[4]

II. Background

This rule amends the FDIC's regulations under the FOIA to incorporate certain changes made to the FOIA, 5 U.S.C. 552, by the FOIA Improvement Act. Among other things, the FOIA Improvement Act requires agencies to provide a minimum of 90 days for requesters to file an administrative appeal. The FOIA Improvement Act also requires agency regulations to address dispute resolution procedures and to provide notification to requesters about the availability of dispute resolution services. The FOIA Improvement Act requires the FDIC to issue regulations which incorporate the changes made by the FOIA Improvement Act not later than 180 days after the date of its enactment (*i.e.,* by December 27, 2016). This rule updates the FDIC's regulations in 12 CFR part 309 to reflect those statutory changes.

In addition, as explained below, this rule amends certain provisions to reflect changes brought about by the amendments to the FOIA in the OPEN Government Act and the OPEN FOIA Act. These amendments to the FOIA from 2007 and 2009 have been followed by the FDIC even though the agency's regulations had not been amended.

Finally, the rule corrects one instance of inaccurate contact information and adjusts the numbering and lettering of current provisions because of additions made to the regulations.

III. Description of the Rule

The following changes have been made to the FDIC's FOIA regulations:

Section 309.2 Definitions

Paragraph (e) of § 309.2 (Definitions) is revised to include the current definition for a record under the FOIA. Section 9 of the OPEN Government Act amended the definitions section of the FOIA, 5 U.S.C. 552(f), by including within the definition of ''record'' any information ''maintained for an agency by an entity under Government contract, for the purposes of records management.'' This amendment made clear that records, in the possession of Government contractors for purposes of records management, are considered agency records for purposes of the FOIA. Through this change to the regulations, the FDIC adopts the statutory definition of ''record.''

Section 309.4 Publicly Available Records

Paragraph (a)(2) of § 309.4 (Records available on the FDIC's World Wide Web page) is revised to replace outdated wording concerning the inspection of records that are required to be made available to the public. In the current version of the FDIC's regulations, the phrase ''via computer telecommunications'' is used. The FOIA Improvement Act changed this wording to ''for inspection in an electronic format.'' Through this change to the regulations, the FDIC adopts the language concerning public inspection of records in the FOIA Improvement Act.

Paragraph (a)(2)(i)(D) of § 309.4 (Records available on the FDIC's World Wide Web page) is revised to include

[1] 12 CFR 309.2, 309.4, 309.5.

[2] Public Law 114–185, 130 Stat. 538 (2016).

[3] Public Law 110–175, 121 Stat. 2524 (2007).

[4] Public Law 111–83, 123 Stat. 2142, 2184 (2009).

the requirement that the FDIC make available for public inspection in an electronic format any record that has been released and (i) that the FDIC determines has become or is likely to become the subject of subsequent requests for substantially the same records, or (ii) that has been requested three or more times. This requirement has been the practice of the FDIC for a number of years, is in accord with the current practice of the FDIC and is required by the FOIA Improvement Act.

Paragraph (b) of § 309.4 (Public Information Center) is revised to correct inaccurate contact information for the FDIC's Public Information Center. This revision to the regulations is required so that requesters have the correct contact information when inquiring about publicly available records.

Section 309.5 Procedures for Requesting Records

Paragraph (a)(6) of § 309.5 (Representative of the news media) is revised to include the current definition of ''representative of the news media'' under the FOIA. Section 3 of the OPEN Government Act amended 5 U.S.C. 552(a)(4)(A)(ii) of the FOIA by expressly providing a definition of ''representative of the news media.'' Through this change to the regulations, the FDIC adopts the definition of ''representative of the news media'' that is in the OPEN Government Act.

Paragraph (d)(1) of § 309.5 (Receipt of requests) is revised to specify that the FDIC will provide a requester with an individualized tracking number for any FOIA request that satisfies 12 CFR 309.5(b), no matter how long it will take to process the request. Section 7 of the OPEN Government Act amended 5 U.S.C. 552(a) by requiring agencies to assign an individualized tracking number for each request that will require more than ten days to process. This section codified existing requirements set forth in Executive Order 13,392. Providing tracking numbers for every FOIA request that satisfies § 309.5(b), including those that will take less than ten days to process, has been the practice of the FDIC for a number of years, is in accord with the current practice of the FDIC and adopts the language of the OPEN Government Act.

Paragraph (d)(4) of § 309.5 is revised to account for a change in numbering because of the addition of § 309.5(h) (Dispute resolution). Previously, the paragraph covering procedures concerning appeals that is cross-referenced in this paragraph was § 309.5(h); it is now § 309.5(i). This adjustment to numbering is necessary to maintain the organizational integrity of the regulations.

Paragraph (d)(6) of § 309.5 (Checking status of request) is added to notify requesters of the contact information for FDIC's FOIA Service Center (telephone number and Web site address), thereby enabling requesters to obtain certain information about the status of their request. Section 7 of the OPEN Government Act amended 5 U.S.C. 552(a) by requiring agencies to establish a telephone number or a Web site to allow requesters to inquire about the status of their request, obtain the date an agency originally received their request, and obtain an estimated date for the completion of the agency's processing of their request. This section of the OPEN Government Act codified existing requirements set forth in Executive Order 13,392. The FDIC has a FOIA Service Center that is accessible via the internet and telephone and, through either method, requesters are provided with the date of the FDIC's receipt of their request and the estimated date on which the FDIC will complete its processing of their request. The FDIC has made these services and information available to requesters for a number of years. The addition of this notification provision to the regulations is in accord with the FDIC's current practice and adopts the language in the OPEN Government Act.

Paragraph (d)(7) of § 309.5 (Notification) is revised in numbering because of the addition of § 309.5(d)(6) (Checking status of request). Previously this paragraph was § 309.5(d)(6) (Notification); it is now § 309.5(d)(7) (Notification). This adjustment to numbering is necessary to maintain the organizational integrity of the regulations.

Paragraph (d)(8) of § 309.5 (Response to request) is revised in numbering because of the addition of § 309.5(d)(6) (Checking status of request). Previously this paragraph was § 309.5(d)(7); it is now § 309.5(d)(8). This adjustment to numbering is necessary to maintain the organizational integrity of the regulations.

Paragraph (d)(8)(iii) of § 309.5 (Response to request) is added to require the FDIC to notify requesters, in its response to their request, of their right to seek assistance from the FDIC's FOIA Public Liaison, if the FDIC determines such request satisfies 12 CFR 309.5(b). Section 2 of the FOIA Improvement Act added 5 U.S.C. 552(a)(6)(A)(i)(II), which requires agencies to offer the services of their FOIA Public Liaison when issuing their determinations of requests. The addition of this notification provision to the regulations is in accord with the FDIC's current practice and is required by the FOIA Improvement Act.

Paragraph (d)(8)(iv) of § 309.5 (Response to request) is revised in numbering because of the addition of § 309.5(d)(8)(iii) (Checking status of request). Previously this paragraph was § 309.5(d)(8)(iii); it is now § 309.5(d)(8)(iv). This adjustment to numbering is necessary to maintain the organizational integrity of the regulations.

Paragraph (d)(8)(iv)(C) of § 309.5 (Response to request) is revised to remove an ''and'' because of the addition of § 309.5(d)(8)(iv)(E). This removal is necessary to maintain the organizational integrity of the regulations.

Paragraph (d)(8)(iv)(D) of § 309.5 (Response to request) is revised to provide for notification to the requester that the deadline to file an administrative appeal is extended to 90 days, in conformity with the 90-day time period established by the FOIA Improvement Act. Section 2 of the FOIA Improvement Act amended 5 U.S.C. 552(a)(6)(A)(i) by changing the time period for an appeal of adverse determinations, from 30 days to 90 days. This paragraph is also revised to add an ''and'' because of the addition of § 309.5(d)(8)(iv)(E). These changes are required by the FOIA Improvement Act and for the regulation to remain organized.

Paragraph (d)(8)(iv)(E) of § 309.5 (Response to request) is added to include a requirement that the FDIC notify requesters, in response to an adverse determination of a request that satisfies § 309.5(b), of their right to seek assistance from the FDIC's FOIA Public Liaison and/or the Office of Government Information Services (OGIS) at the National Archives and Records Administration. Section 2 of the FOIA Improvement Act added 5 U.S.C. 552(a)(6)(A)(i)(III), which requires that when agencies make adverse determinations on requests, they must offer the services of their FOIA Public Liaison and/or OGIS. The addition of this provision concerning notification to the regulations is required by the FOIA Improvement Act.

Paragraph (f)(1)(x) of § 309.5 is revised to account for a change in numbering because of the addition of § 309.5(h) (Dispute resolution). Previously, the paragraph referring to procedures concerning appeals that is cross-referenced in this paragraph was § 309.5(h); it is now § 309.5(i). This adjustment to numbering is necessary to maintain the organizational integrity of the regulations.

Paragraph (g)(3)(i) of § 309.5 (Exempt information) is revised in numbering and by adding an ''and'' because of the addition of § 309.5(g)(3)(ii). Previously this paragraph was § 309.5(d)(8)(iii); it is now § 309.5(d)(8)(iv). This adjustment to numbering and the addition of an ''and'' is necessary to maintain the organizational integrity of the regulations.

Paragraph (g)(3)(ii) of § 309.5 (Exempt information) is added to include a requirement codified in the OPEN FOIA Act that statutes enacted after the date of the enactment of the OPEN FOIA Act must specifically cite to Exemption 3 of the FOIA in order to qualify under Exemption 3. The OPEN FOIA Act was enacted on October 28, 2009, and so this amendment impacts statutes enacted after that date. In order for any statute enacted after that date to qualify as an Exemption 3 statute, it must satisfy one of the traditional requirements, *i.e.,* it must ''require that the matters be withheld from the public in such a manner as to leave no discretion on the issue'' or it must ''establish particular criteria for withholding or refer to particular types of matters to be withheld;'' and, the statute enacted after October 28, 2009, must also specifically cite to Exemption 3. Through this change to the regulations, the FDIC is bringing the language concerning withholdings made pursuant to Exemption 3 into accord with the OPEN FOIA Act.

Paragraph (h) of § 309.5 (Dispute resolution) is added to include procedures for engaging in dispute resolution through the FOIA Public Liaison and OGIS. Section 3 of the FOIA Improvement Act requires agencies to amend their regulations to include procedures for engaging in dispute resolution through the FOIA Public Liaison and OGIS. The FDIC has pointed requesters to its FOIA Service Center at *http://www.fdic.gov,* which contains details about the procedures for contacting these entities in order to engage in dispute resolution. The addition of these procedures to the FDIC's regulations is required by the FOIA Improvement Act.

Paragraph (i) of § 309.5 (Appeals) is revised in numbering because of the addition of § 309.5(h) (Dispute resolution). Previously this paragraph was § 309.5(h); it is now § 309.5(i). This adjustment to numbering is necessary to maintain the organizational integrity of the regulations.

Paragraph (i)(2) of § 309.5 (Appeals) is revised to extend the time to file an administrative appeal to 90 days, in conformity with the 90-day time period established by the FOIA Improvement Act. Section 2 of the FOIA Improvement Act amended 5 U.S.C. 552(a)(6)(A)(i), changing the time period for appeal of adverse determinations from 30 days to 90 days. This change to the regulations is required by the FOIA Improvement Act.

Paragraph (j) of § 309.5 (Records of another agency) is revised in numbering because of the addition of § 309.5(h) (Dispute resolution). Previously this paragraph was § 309.5(i); it is now § 309.5(j). This adjustment to numbering is necessary to maintain the organizational integrity of the regulations.

IV. Expected Effects of the Rule

The FDIC has analyzed the expected effects of the interim final rule and estimates them to be relatively small. The rule makes two primary changes to the existing regulations: Extending the deadline for requesters to file an appeal, and establishing procedures for dispute resolution and requiring notice to requesters about the availability of dispute resolution services. These changes help support the policy objective of the FOIA, which is to provide public access to government information.

The provision in the interim final rule that extends the time period for which an appeal will be considered will likely result in a small increase in administrative costs associated with FOIA requests, but that may be offset by a decrease in lawsuits brought since requesters will now have a larger window for seeking administrative review of an adverse request determination. In the past ten fiscal years, the FDIC has received 238 appeals from FOIA requesters, an average of 24 appeals per fiscal year. The extension of the appeal time period from 30 business days to 90 calendar days will likely result in a general increase in number of appeals, given the larger window for filing an appeal. A general increase in the number of appeals will likely increase administrative costs for the FDIC. Any potential increase in administrative costs as a result of the extension of the appeal period rule is difficult to estimate given that costs will depend upon both the volume of requests received and the extent to which the requests may be subject, in whole or in part, to denial. However, the extension of the appeal period will benefit the public by expanding the deadline for requesters to file an administrative appeal of adverse determinations made by the FDIC.

The establishment of a dispute resolution process also supports public access to government information while likely posing a small increase in administrative costs for the FDIC and/or the OGIS. The establishment of a dispute resolutions process, in addition to the FDIC appeal process, will support public access to government records by providing requesters with an additional mechanism for the review of adverse determinations, in the event of a dispute. Any potential increase in administrative costs as a result of the establishment of a dispute resolution process by the interim final rule is difficult to estimate, given the unpredictable elements noted above.

The interim final rule also makes changes to the FDIC's FOIA regulations to reflect FDIC FOIA practices initially prompted by the OPEN Government Act and the OPEN FOIA Act. Most of the changes to the FDIC FOIA regulations are procedural and either codify current practice or make benign changes to the FOIA regulations that are unlikely to pose any costs or benefits for the Public.

In conclusion, there is potential for a small increase in administrative costs for the FDIC posed by the revisions, but the policy objective of public access to government information continues to be supported and would in fact be enhanced—as required by the FOIA Improvement Act.

V. Alternatives Considered

The changes in the interim final rule are mandated by the FOIA Improvement Act and are in accord with the OPEN Government Act and the OPEN FOIA Act. Under the FOIA Improvement Act, the FDIC has no discretion to make or consider alternative specifications to the provisions in the interim final rule. The other technical changes to 12 CFR part 309 are minor and designed to improve the transparency and readability of the CFR, and therefore FDIC staff did not actively consider alternative approaches to these changes.

VI. Request for Comment

Pursuant to the Administrative Procedure Act (the ''APA''), at 5 U.S.C. 553(b), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' As discussed above, the FOIA Improvement Act requires the FDIC to issue regulations which incorporate the changes made by the FOIA Improvement Act not later than 180 days after the date of its enactment (*i.e.,* by December 27, 2016). Because the statutory changes under the FOIA Improvement Act were effective

immediately and due to the statutory deadline imposed for rulemaking, the FDIC has concluded that publishing notice and taking comment before issuing a final rule would be impracticable. In addition, since these changes merely bring the regulations into alignment with the provisions contained in the FOIA Improvement Act, the OPEN Government Act, and the OPEN FOIA Act, and improve the rule's accuracy and organization, publishing prior notice would be unnecessary. Therefore, the FDIC finds good cause exists to publish this rule as final without prior notice and comment and with an effective date as of the date of its publication in the **Federal Register** to allow the public to benefit immediately. Nevertheless, the FDIC welcomes public comments from any interested person on any aspect of the changes made by this interim final rule. Please refer to the **ADDRESSES** section above. The FDIC will carefully consider all public comments, if any, in any further development of this rule.

VII. Regulatory Analysis

Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act [5] generally requires that regulations prescribed by federal banking agencies which impose additional reporting, disclosures, or other new requirements on insured depository institutions take effect on the first day of a calendar quarter unless the regulation is required to take effect on another date pursuant to another act of Congress or the agency determines for good cause that the regulation should become effective on an earlier date. This interim final rule makes revisions in the FDIC's FOIA regulations, because these changes are merely bringing the regulations into alignment with the provisions contained in the FOIA Improvement Act, the OPEN Government Act, and the OPEN FOIA Act, as well as for purposes of accuracy and organization. It does not impose any new or additional reporting, disclosures, or other requirements on insured depository institutions. Additionally, as previously noted, the FOIA Improvement Act requires the FDIC to issue regulations which incorporate the changes made by the FOIA Improvement Act not later than 180 days after the date of its enactment (*i.e.,* by December 27, 2016). Accordingly, this interim final rule will be effective upon publication.

[5] 12 U.S.C. 4802.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [6] applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed above, consistent with section 553(b)(B) of the APA, the FDIC has determined for good cause that general notice and opportunity for public comment is not necessary. Accordingly, the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply. Nonetheless, the FDIC observes that because this interim final rule only amends the FDIC's regulations under the FOIA to incorporate certain changes made by the FOIA Improvement Act, the OPEN Government Act, and the OPEN FOIA Act, and for purposes of accuracy and organization, it should not have a significant economic impact on a substantial number of small entities. The FDIC requests comment on these conclusions.

The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999: Assessment of Federal Regulations and Policies on Families

The FDIC determined that this interim final rule will not affect family wellbeing within the meaning of section 654 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.[7]

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [8] states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC has determined that this interim final rule does not create any new, or revise any existing, collections of information under the Paperwork Reduction Act. Consequently, no information collection request will be submitted to the OMB for review. The FDIC invites comment on its PRA determination.

Plain Language Act

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000.[9] The FDIC invites comment on how to make this rule easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could the FDIC present the rule more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Does the rule contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the FDIC incorporate to make the rule easier to understand?

[6] Public Law 96–354, Sept. 19, 1980, codified to 5 U.S.C. 601 *et seq.*

[7] Public Law 105–277, 112 Stat. 2681 (1998).

[8] 44 U.S.C. 3501–3521.

[9] Public Law 106–102, 113 Stat. 1338 (1999).

List of Subjects in 12 CFR Part 309

Federal Deposit Insurance Corporation, Procedure and Rules of Practice, Disclosure of Information.

Accordingly, for the reasons stated in the preamble, 12 CFR chapter 3, subchapter A, part 309 is amended as follows:

PART 309—DISCLOSURE OF INFORMATION

■ 1. The authority citation for part 309 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1819 ''Seventh'' and ''Tenth.''

■ 2. Section 309.2 is amended by revising paragraph (e) to read as follows:

§ 309.2 Definitions.

* * * * *

(e) The term *record* means*:*

(1) Any information that would be an agency record subject to the requirements of this section when maintained by the FDIC in any format, including an electronic format; and

(2) Any information described under paragraph (e)(1) of this section that is maintained for the FDIC by an entity under Government contract, for purposes of records management.

* * * * *

■ 3. Section 309.4 is amended by revising the paragraph (a)(2) subject heading and paragraphs (a)(2)(i) introductory text, (a)(2)(i)(D), and (b) to read as follows:

§ 309.4 Publicly available records.

(a) * * *

(2) *Documents required to be made available for inspection in an electronic*

format. (i) The following types of documents created on or after November 1, 1996, and required to be made available for inspection in an electronic format, may be found on the FDIC's World Wide Web page located at: *http://www.fdic.gov:*

* * * * *

(D) Copies of all records released to any person under § 309.5:

(*1*) That, because of the nature of their subject matter, the FDIC determines have become or are likely to become the subject of subsequent requests for substantially the same records; or

(*2*) That have been requested 3 or more times; and

* * * * *

(b) *Public Information Center.* The FDIC maintains a Public Information Center or ''PIC'' that contains Corporate records that the Freedom of Information Act requires be made available for regular inspection and copying, as well as any records or information the FDIC, in its discretion, has regularly made available, to the public. The PIC has extensive materials of interest to the public, including many Reports, Summaries and Manuals used or published by the Corporation that are made available, by appointment, for inspection and copying. The PIC is open from 9 a.m. to 4 p.m., Monday through Friday, excepting Federal holidays. It is located at 3501 North Fairfax Drive, Room E–1005, Arlington, VA 22226. The PIC may be reached during business hours by calling 1(877) 275–3342 or 1-(703) 562–2200.

* * * * *

■ 4. Section 309.5 is amended by:

■ a. Revising paragraphs (a)(6), (d)(1), and (d)(4);

■ b. Redesignating paragraphs (d)(6) and (d)(7) as paragraphs (d)(7) and (d)(8), respectively and adding new paragraph (d)(6);

■ c. Redesignating newly redesignated paragraph (d)(8)(iii) as paragraph (d)(8)(iv) and adding a new paragraph (d)(8)(iii);

■ d. Revising newly redesignated paragraphs (d)(8)(iv)(C) and (d)(8)(iv)(D) and adding paragraph (d)(8)(iv)(E);

■ e. Revising paragraphs (f)(1)(x) and (g)(3);

■ f. Redesignating paragraphs (h) and (i) as paragraphs (i) and (j), respectively;

■ g. Adding new paragraph (h); and

■ h. Revising newly redesignated paragraph (i)(2).

The revisions and additions read as follows:

§ 309.5 Procedures for requesting records.

(a) * * *

(6) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of *news*) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media will be considered to be news-media entities. A freelance journalist will be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by that entity. A publication contract would present a solid basis for such an expectation; the FDIC may also consider the past publication record of the requester in making this determination.

(d) * * *

(1) *Receipt of requests.* Upon receipt of a request that satisfies paragraph (b) of this section, the FOIA/PA Group will acknowledge receipt of the request in writing to the requester and provide the requester with an individualized tracking number for the request. The date of receipt for such request, including one that is addressed incorrectly or that is referred by another agency, is the date the FOIA/PA Group actually receives the request.

* * * * *

(4) A requester seeking expedited processing will be notified whether expedited processing has been granted within ten (10) working days of the receipt of the request. If the request for expedited processing is denied, the requester may file an appeal pursuant to the procedures set forth in paragraph (i) of this section, and the FDIC shall respond to the appeal within ten (10) working days after receipt of the appeal.

* * * * *

(6) *Checking status of request.* A requester may check on the status of a request using the tracking number assigned to the request to obtain information about the request including the date on which the FDIC originally received the request and an estimated date on which the FDIC will complete action on the request. The status of a request may be obtained:

(i) Online at the FDIC's FOIA Service Center, at *http://www.fdic.gov,* if the request was submitted electronically using the FDIC's online FOIA request form; or

(ii) By calling the FDIC's FOIA Service Center at (202) 898–7021, if the request was submitted by email, facsimile or regular mail.

* * * * *

(8) * * *

(iii) The right of the requester to seek assistance from the FDIC's FOIA Public Liaison; and

(iv) * * *

(C) The exemptions relied on for the denial;

(D) The right of the requester to appeal the denial to the FDIC's General Counsel within 90 calendar days following receipt of the notification, as specified in paragraph (i) of this section; and

(E) The right of the requester to seek dispute resolution services from the FDIC's FOIA Public Liaison and/or the Office of Government Information Services (OGIS).

(f) * * *

(1) * * *

(x) As part of the initial request, a requester may ask that the FDIC waive or reduce fees if disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Determinations as to a waiver or reduction of fees will be made by the FOIA/PA Group, Legal Division (or designee) and the requester will be notified in writing of his/her determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the FDIC's General Counsel (or designee) pursuant to the procedure set forth in paragraph (i) of this section.

* * * * *

(g) * * *

(3) Records specifically exempted from disclosure by statute, provided that such statute:

(i)(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(ii) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to 5 U.S.C. 552(b)(3);

* * * * *

(h) *Dispute resolution.* A requester seeking to engage in dispute resolution may make a request to the FOIA Public Liaison and/or OGIS by following the procedures set forth online in the FDIC's FOIA Service Center at *http://www.fdic.gov.*

(i) * * *

(2) A person whose initial request for records under this section, or whose request for a waiver of fees under paragraph (f)(1)(x) of this section, has been denied, either in part or in whole, has the right to appeal the denial to the FDIC's General Counsel (or designee) within 90 calendar days after receipt of notification of the denial. Appeals of denials of initial requests or for a waiver of fees must be in writing and include any additional information relevant to consideration of the appeal.

* * * * *

Dated at Washington, DC, this 15th day of November, 2016.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–27961 Filed 11–21–16; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3701; Directorate Identifier 2015–NM–015–AD; Amendment 39–18689; AD 2016–21–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013–25–08 for all Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200 and –300 series airplanes. AD 2013–25–08 required a repetitive inspection program on certain check valves in the hydraulic systems that includes, among other things, inspections for lock wire presence and integrity, traces of seepage or black deposits, proper torque, alignment of the check valve and manifold, installation of new lock wire, and corrective actions if needed. This new AD removes airplanes from the applicability, and requires modifying the green, blue, and yellow high pressure hydraulic manifolds by replacing certain check valves with improved check valves, which terminates the repetitive inspections required by this AD. This AD was prompted by multiple reports of hydraulic line check valves loosening. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 27, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 27, 2016.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of January 31, 2014 (78 FR 78694, December 27, 2013).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of December 14, 2009 (74 FR 62208, November 27, 2009).

ADDRESSES: For service information identified in this final rule, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3701.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3701; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013) (''AD 2013–25–08''). AD 2013–25–08 applied to all Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200 and –300 series airplanes. The NPRM published in the **Federal Register** on February 25, 2016 (81 FR 9374) (''the NPRM''). The NPRM was prompted by multiple reports of hydraulic line check valves loosening. The NPRM proposed to continue to require a repetitive inspection program on certain check valves in the hydraulic systems that includes, among other things, inspections for lock wire presence and integrity, traces of seepage or black deposits, proper torque, alignment of the check valve and manifold, installation of new lock wire, and corrective actions if needed. The NPRM also proposed to add airplanes to the applicability, and require modifying the green, blue, and yellow high pressure hydraulic manifolds by replacing certain check valves with improved check valves, which would terminate the repetitive inspections required by the proposed AD. We are issuing this AD to detect and correct hydraulic check valve loosening; loosened valves could result in hydraulic leaks, possibly leading to the loss of all three hydraulic systems and consequent loss of control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0009, dated January 16, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition. The MCAI states:

> An A330 operator experienced a Yellow hydraulic circuit low level due to a loose check valve, Part Number (P/N) CAR401. During the inspection on the other two hydraulic systems, the other three check valves P/N CAR401 were also found to be loose with their lock wire broken in two instances. Airbus A340 aeroplanes are also equipped with P/N CAR401 high pressure manifold check valves.
>
> Additional cases of P/N CAR401 check valve loosening have been reported on aeroplanes having accumulated more than 1,000 flight cycles (FC). The check valve fitted on the Yellow hydraulic system is more

affected, due to additional system cycles induced by cargo door operation.

This condition, if not detected and corrected, could result in hydraulic leaks, possibly leading to the loss of all three hydraulic systems and consequent loss of control of the aeroplane.

To address this unsafe condition, EASA issued Emergency AD 2009–0223–E [which corresponds to FAA AD 2009–24–09, Amendment 39–16068 (74 FR 62208, November 27, 2009)] to require an inspection programme to detect any check valve loosening and, if necessary, to apply the applicable corrective actions.

EASA AD 2010–0145, which superseded EASA EAD 2009–0223–E retaining its requirements, was issued to expand the applicability to the newly certified models A330–223F and A330–243F.

Prompted by further reported in-service events of check valve P/N CAR401 loosening before reaching the threshold of 700 FC, EASA AD 2011–0139, which superseded EASA AD 2010–0145, retaining its requirements, was issued to:

—Extend the requirement to identify the P/N CAR401 check valves to all aeroplanes, and

—reduce the inspection threshold for aeroplanes fitted with check valve P/N CAR401, either installed in production through Airbus modification 54491, or installed in service through Airbus Service Bulletin (SB) A330–29–3101 or Airbus SB A340–29–4078.

EASA AD 2012–0070, which superseded EASA AD 2011–0139, retaining its requirements, was issued to require an increased torque value of the check valve tightening and High Pressure (HP) manifold re-identification.

Since EASA AD 2012–0070 was issued, additional in-service events have been reported on aeroplanes fitted with check valves on which the increased torque value had been applied. Based on those events, it has been concluded that the action to re-torque the check valves with an increased value is not a satisfactory terminating action for addressing the issue of those check valves.

To address that, EASA issued AD 2012–0244, which partially retained the requirements of EASA AD 2012–0070, which was superseded. Additionally, for aeroplanes equipped with P/N CAR401 on which the increased torque value had been applied, EASA AD 2012–0244 required repetitive inspections of the check valves and HP manifolds. Finally, EASA AD 2012–0244 also required application of a lower torque value when a check valve P/N CAR401 is installed on an aeroplane.

Note: The reporting and the torque value increase requirements for check valves P/N CAR401 of EASA AD 2012–0070 were no longer part of EASA AD 2012–0244.

EASA AD was revised to clarify which actions are required for P/N CAR401 check valves, depending on applied (or not) torque value.

Since EASA AD 2012–0244R1 was issued, Airbus developed an improved check valve P/N CAR402, which is embodied in production through Airbus modification 203972, and in service through associated Airbus SB A330–29–3125, or Airbus SB A340–29–4096, as applicable to aeroplane type. In addition, these SBs provide instructions about the torque value (between 230 and 250 Nm) and re-identification of HP manifolds after check valve P/N CAR402 installation.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2012–0244R1, which is superseded, and requires the installation of check valves P/N CAR402 as terminating action to the repetitive inspections [and removes airplanes on which Airbus modification 203972 has been embodied from the applicability].

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3701.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM and the FAA's response to the comment.

Support for the NPRM

American Airlines (AAL) stated that it operates 24 airplanes that will be affected by the NPRM, and that it agrees with the need to accomplish Airbus Service Bulletin A330–29–3125 on these airplanes.

Request To Reference Revised Service Information

AAL requested that we revise the NPRM to reference Airbus Service Bulletin A330–29–3125, Revision 02, including Appendixes 01 and 02, dated January 21, 2016. AAL pointed out that this revision includes several corrections in the Accomplishment Instructions.

We agree to reference the latest service information in this final rule. Since we issued the NPRM, Airbus has issued Airbus Service Bulletin A330–29–3125, Revision 03, including Appendixes 01 and 02, dated April 8, 2016; and Service Bulletin A340–29–4096, Revision 02, including Appendixes 01 and 02, dated April 8, 2016. This service information states that no additional work is required by these revisions for airplanes modified by any previous issue. We have revised paragraph (p) of this AD to reference this revised service information as appropriate sources of service information for accomplishing the actions required by that paragraph. We have also revised paragraph (s) of this AD by adding credit for actions required by paragraph (p) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A330–29–3125, Revision 02, including Appendixes 01 and 02, dated January 21, 2016; or Airbus Service Bulletin A330–29–3125, Revision 01, including Appendixes 01 and 02, dated July 30, 2015; or Airbus Service Bulletin A340–29–4096, Revision 01, including Appendixes 01 and 02, dated July 30, 2015; as applicable. Additionally, we have reformatted paragraph (s) of this AD to improve readability; this change does not affect the intent or requirements of that paragraph.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these changes:

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

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A330–29–3125, Revision 03, including Appendixes 01 and 02, dated April 8, 2016; and Service Bulletin A340–29–4096, Revision 02, including Appendixes 01 and 02, dated April 8, 2016. This service information describes procedures for modifying the green, blue, and yellow high pressure hydraulic manifolds by replacing each check valve having P/N CAR401 with an improved check valve having P/N CAR402. These documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 88 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

The actions required by AD 2013–25–08, and retained in this AD take about 10 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2013–25–08 is $850 per product.

We also estimate that it would take about 32 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85

per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $239,360, or $2,720 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD. We have no way of determining the number of aircraft that might need these actions.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013), and adding the following new AD:

2016–21–08 Airbus: Amendment 39–18689; Docket No. FAA–2016–3701; Directorate Identifier 2015–NM–015–AD.

(a) Effective Date

This AD is effective December 27, 2016.

(b) Affected ADs

This AD replaces AD 2013–25–08, Amendment 39–17704 (78 FR 78694, December 27, 2013) (''AD 2013–25–08'').

(c) Applicability

This AD applies to Airbus airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers except those on which Airbus modification 203972 has been embodied in production.

(2) Model A340–211, –212, –213, –311, –312, and –313 airplanes, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Reason

This AD was prompted by multiple reports of hydraulic line check valves loosening. We are issuing this AD to detect and correct hydraulic check valve loosening; loosened valves could result in hydraulic leaks, possibly leading to the loss of all three hydraulic systems and consequent loss of control of the airplane.

(f) Compliance

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

(g) Retained Inspections, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2013–25–08, with no changes. Except for Model A330–223F and A330–243F airplanes: Do the actions required by paragraphs (g)(1) and (g)(2) of this AD.

(1) For airplanes that do not have Airbus Modification 54491 embodied in production, or Airbus Service Bulletin A330–29–3101 or Airbus Service Bulletin A340–29–4078 embodied in service: Within 100 flight cycles or 28 days after December 14, 2009 (the effective date of AD 2009–24–09, Amendment 39–16068 (74 FR 62208, November 27, 2009) (''AD 2009–24–09'')), whichever occurs first, inspect the check valves on the blue, green, and yellow hydraulic systems to identify their part numbers (P/Ns), in accordance with the instructions of Airbus All Operators Telex (AOT) A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and –300 series airplanes); or Airbus AOT A340–29A4086, Revision 1, dated October 8, 2009 (for Model A340–200 and –300 series airplanes). Accomplishment of the inspection required by paragraph (h) of this AD terminates the requirements of this paragraph.

(i) If check valves having P/N CAR401 are installed on all three hydraulic systems, before further flight, do the actions specified in paragraph (g)(2)(i) of this AD. After accomplishing the actions required by paragraph (g)(2)(i) of this AD, do the actions specified in paragraphs (g)(2)(ii) and (g)(2)(iii) of this AD at the applicable compliance times specified in those paragraphs. Accomplishment of the inspection required by paragraph (i) of this AD terminates the requirements of this paragraph.

(ii) If check valves having P/N CAR401 are not installed on all three hydraulic systems, no further action is required by this paragraph until any check valve having P/N CAR400 is replaced with a check valve having P/N CAR401. If any check valve having P/N CAR400 is replaced by a check valve having P/N CAR401, before further flight, do the inspection specified in paragraph (g)(1) of this AD to determine if all three hydraulic systems are equipped with check valves having P/N CAR401. Accomplishment of the inspection required by paragraph (h) of this AD terminates the requirements of this paragraph.

(2) For airplanes on which Airbus Modification 54491 was embodied in production, or Airbus Service Bulletin A330–29–3101; or Airbus Service Bulletin A340–29–4078 was embodied in service, do the actions specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD.

(i) Except as required by paragraph (g)(1)(i) of this AD, at the applicable times specified in paragraphs (g)(2)(i)(A) and (g)(2)(i)(B) of this AD, as applicable: Do the inspection program (detailed inspection of the lock wire for presence and integrity, a detailed inspection for traces of seepage or black deposits, and an inspection for proper torque) on yellow and blue high pressure manifolds, install new lock wires, and do all applicable corrective actions, in accordance with the instructions of paragraph 4.1.1 of Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and –300 series airplanes); or Airbus AOT A340–29A4086, Revision 1, dated October 8,

2009 (for Airbus Model A340–200 and –300 series airplanes). Do all applicable corrective actions before further flight. Accomplishment of the inspection required by paragraph (h)(1) of this AD terminates the requirements of this paragraph.

(A) For airplanes on which Airbus Modification 54491 has been embodied in production: At the later of the times specified in paragraphs (g)(2)(i)(A)(*1*) and (g)(2)(i)(A)(*2*) of this AD.

(*1*) Before the accumulation of 1,000 total flight cycles since first flight but no earlier than the accumulation of 700 total flight cycles since first flight.

(*2*) Within 100 flight cycles or 28 days after December 14, 2009 (the effective date of AD 2009–24–09), whichever occurs first.

(B) For airplanes on which Airbus Service Bulletin A330–29–3101 or Airbus Service Bulletin A340–29–4078 was embodied in service: At the later of the times specified in paragraphs (g)(2)(i)(B)(*1*) and (g)(2)(i)(B)(*2*) of this AD.

(*1*) Within 1,000 flight cycles since the embodiment of Airbus Service Bulletin A330–29–3101 or Airbus Service Bulletin A340–29–4078 but no earlier than 700 flight cycles after the embodiment of Airbus Service Bulletin A330–29–3101 or Airbus Service Bulletin A340–29–4078.

(*2*) Within 100 flight cycles or 28 days after December 14, 2009 (the effective date of AD 2009–24–09), whichever occurs first.

(ii) Within 900 flight hours after accomplishment of paragraph (g)(2)(i) of this AD, do the inspection program (detailed inspection of the lock wire for presence and integrity, a detailed inspection for traces of seepage or black deposits, and an inspection for proper torque) and install a new lock wire on the green high pressure manifold; and do an inspection (detailed inspection for traces of seepage or black deposits, and detailed inspection to determine alignment of the check valve and manifold) on the yellow and blue high pressure manifolds, and do all applicable corrective actions; in accordance with the instructions of paragraph 4.1.2 of Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and –300 series airplanes); or Airbus AOT A340–29A4086, Revision 1, dated October 8, 2009 (for Model A340–200 and –300 series airplanes). Do all applicable corrective actions before further flight. Accomplishment of the inspection program required by paragraph (i) of this AD terminates the requirements of this paragraph.

(iii) Within 900 flight hours after accomplishment of paragraph (g)(2)(ii) of this AD, and thereafter at intervals not to exceed 900 flight hours, do the inspection program (detailed inspection for traces of seepage or black deposits, and detailed inspection to determine alignment of the check valve and manifold) on the green, yellow, and blue high pressure manifolds, and do all applicable corrective actions, in accordance with the instructions of paragraph 4.1.3 of Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and –300 series airplanes); or Airbus AOT A340–29A4086, Revision 1, dated October 8, 2009 (for Model A340–200 and –300 series airplanes). Do all applicable corrective actions before further flight. Accomplishment of the inspection program required by paragraph (i) of this AD terminates the requirements of this paragraph.

(h) Retained Inspection, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2013–25–08, with no changes. For airplanes equipped with check valves having P/N CAR400; and for airplanes equipped with check valves having P/N CAR401, except for airplanes on which Airbus Modification 201384 has been embodied during production, or on which Airbus Service Bulletin A330–29–3119 (for Model A330–200, –200F, and –300 series airplanes) or Airbus Service Bulletin A340–29–4091 (for Model A340–200 and –300 series airplanes) has been embodied in service: Within 900 flight hours after January 31, 2014 (the effective date of AD 2013–25–08), inspect the check valves on the blue, green, and yellow hydraulic systems to identify their part numbers, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–29–3111, Revision 02, dated June 23, 2011 (for Model A330–200, –200F, and –300 series airplanes); or Airbus Mandatory Service Bulletin A340–29–4086, Revision 02, dated June 23, 2011 (for Model A340–200 and –300 series airplanes). Accomplishment of the actions required by this paragraph terminates the requirements specified in paragraphs (g)(1) and (g)(1)(ii) of this AD.

(1) If check valves having P/N CAR401 are installed on all three hydraulic systems: Before further flight, do the inspection program (detailed inspection for red mark presence and alignment integrity of the check valve and manifold, a detailed inspection for traces of seepage or black deposits, and an inspection for proper torque) on yellow and blue high pressure manifolds, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–29–3111, Revision 02, dated June 23, 2011 (for Model A330–200, –200F, and –300 series airplanes); or Airbus Mandatory Service Bulletin A340–29–4086, Revision 02, dated June 23, 2011 (for Model A340–200 and –300 series airplanes). Accomplishment of the actions required by this paragraph terminates the requirements specified in paragraph (g)(2)(i) of this AD.

(2) If check valves having P/N CAR401 are not installed on all three hydraulic systems, no further action is required by this paragraph until any check valve having P/N CAR400 is replaced with a check valve having P/N CAR401. If any check valve having P/N CAR400 is replaced by a check valve having P/N CAR401: Before further flight after such replacement, do the actions specified in paragraph (h) of this AD, to determine if all three hydraulic systems are equipped with check valves having P/N CAR401. If check valves having P/N CAR401 are installed on all three hydraulic systems: Before further flight, do the actions specified in paragraphs (h)(1) and (i) of this AD.

(i) Retained Repetitive Inspection Program and Corrective Actions, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2013–25–08, with no changes. Within 900 flight hours after accomplishment of paragraph (h)(1) of this AD, do the inspection program (detailed inspection for red mark presence and alignment integrity of the check valve and manifold, a detailed inspection for traces of seepage or black deposits, and an inspection for proper torque) on the green, yellow, and blue system check valves, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–29–3111, Revision 02, dated June 23, 2011 (for Model A330–200, –200F, and –300 series airplanes); or Airbus Mandatory Service Bulletin A340–29–4086, Revision 02, dated June 23, 2011 (for Model A340–200 and –300 series airplanes). Do all applicable corrective actions before further flight. Repeat the inspection program thereafter at intervals not to exceed 900 flight hours. Accomplishment of the actions required by this paragraph terminates the requirements specified in paragraphs (g)(1)(i), (g)(2)(ii), and (g)(2)(iii) of this AD.

(j) Retained Repetitive Inspection for Certain Airplanes, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2013–25–08, with no changes. For airplanes equipped with check valves having P/N CAR401 and on which Airbus Modification 201384 has been embodied during production, or on which Airbus Service Bulletin A330–29–3119 (for Model A330–200, –200F, and –300 series airplanes); or Airbus Service Bulletin A340–29–4091 (for Model A340–200 and –300 series airplanes) has been embodied in service: Within 1,000 flight hours after January 31, 2014 (the effective date of AD 2013–25–08), do a general visual inspection of the green, yellow, and blue high pressure manifolds and check valves having P/N CAR401 for any sign of rotation of the check valve head, and for any signs of hydraulic fluid leakage or seepage (including black deposits), in accordance with the instructions of Airbus Alert Operators Transmission A29L001–12, dated October 11, 2012. Repeat the inspection thereafter at interval not to exceed 900 flight hours.

(k) Retained Corrective Action for Certain Airplanes, With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2013–25–08, with no changes. If, during any inspection required by paragraph (j) of this AD, any sign of rotation of the check valve head is found, or any sign of hydraulic fluid leakage or seepage (including black deposits) is found: Before further flight, do all applicable corrective actions, in accordance with the instructions of Airbus Alert Operators Transmission A29L001–12, dated October 11, 2012.

(l) Retained Provisions Regarding Terminating Action, With No Changes

This paragraph restates the provisions of paragraph (l) of AD 2013–25–08, with no changes. Accomplishment of the corrective actions required by this AD does not constitute terminating action for the repetitive inspections required by this AD.

(m) Retained Replacement Check Valve Torque Value, With No Changes

This paragraph restates the requirements of paragraph (m) of AD 2013–25–08, with no changes. As of January 31, 2014 (the effective date of AD 2013–25–08), at each replacement of a check valve with a check valve having P/N CAR401, apply a torque of 141 to 143 newton meters (N.m) (103.98 to 105.45 pounds-foot (lbf.ft)) during installation.

(n) Retained Credit for Previous Actions, With No Changes

This paragraph restates the provisions of paragraph (n) of AD 2013–25–08, with no changes.

(1) This paragraph provides credit for actions required by paragraph (g)(2)(i) of this AD, if those actions were performed before December 14, 2009 (the effective date of AD 2009–24–09), using the applicable service information specified in paragraphs (n)(1)(i) and (n)(1)(ii) of this AD.

(i) Airbus AOT A330–29A3111, dated September 2, 2009 (for Model A330–200 and –300 series airplanes), which is not incorporated by reference in this AD.

(ii) Airbus AOT A340–29A4086, dated September 2, 2009 (for Model A340–200 and –300 series airplanes), which is not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before January 31, 2014 (the effective date of AD 2013–25–08), using the applicable service information specified in paragraphs (n)(2)(i) through (n)(2)(iv) of this AD.

(i) Airbus AOT A330–29A3111, dated September 2, 2009 (for Model A330–200 and –300 series airplanes), which is not incorporated by reference in this AD.

(ii) Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009 (for Model A330–200 and –300 series airplanes), which is incorporated by reference in this AD.

(iii) Airbus AOT A340–29A4086, dated September 2, 2009 (for Model A340–200 and –300 series airplanes), which is not incorporated by reference in this AD.

(iv) Airbus AOT A340–29A4086, Revision 1, dated October 8, 2009 (for Model A340–200 and –300 series airplanes), which is incorporated by reference in this AD.

(o) Retained Provisions for Reporting, With No Changes

This paragraph restates the provisions of paragraph (o) of AD 2013–25–08, with no changes. Although the service information specified in paragraphs (o)(1) through (o)(5) of this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(1) Airbus Alert Operators Transmission A29L001–12, dated October 11, 2012.

(2) Airbus Mandatory Service Bulletin A330–29–3111, Revision 02, dated June 23, 2011.

(3) Airbus Mandatory Service Bulletin A340–29–4086, Revision 02, dated June 23, 2011.

(4) Airbus AOT A330–29A3111, Revision 1, dated October 8, 2009.

(5) Airbus AOT A340–29A4086, Revision 1, dated October 8, 2009.

(p) New Requirement of This AD: Modify Hydraulic Systems

Within 36 months after the effective date of this AD, modify the green, blue, and yellow high pressure hydraulic manifolds by replacing each check valve having P/N CAR401 with an improved check valve having P/N CAR402, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3125, Revision 03, including Appendixes 01 and 02, dated April 8, 2016; or Airbus Service Bulletin A340–29–4096, Revision 02, including Appendixes 01 and 02, dated April 8, 2016; as applicable.

(q) New Provision of This AD: Terminating Action for Repetitive Inspections

Modification of an airplane, as required by paragraph (p) of this AD, constitutes terminating action for the repetitive inspections required by this AD.

(r) New Requirement of This AD: Parts Installation Limitations

(1) For an airplane that, as of the effective date of this AD, has a check valve having P/N CAR401 installed, after modification as required by paragraph (p) of this AD, no person may install a check valve having P/N CAR401, on that airplane.

(2) For an airplane that does not have a check valve having P/N CAR401 installed, as of the effective date of this AD, no person may install a check valve having P/N CAR401, on that airplane.

(s) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (p) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraphs (s)(1) through (s)(5) of this AD, which are not incorporated by reference in this AD.

(1) Airbus Service Bulletin A330–29–3125, dated August 8, 2014.

(2) Airbus Service Bulletin A330–29–3125, Revision 01, including Appendixes 01 and 02, dated July 30, 2015.

(3) Airbus Service Bulletin A330–29–3125, Revision 02, including Appendixes 01 and 02, dated January 21, 2016.

(4) Airbus Service Bulletin A340–29–4096, dated August 8, 2014.

(5) Airbus Service Bulletin A340–29–4096, Revision 01, including Appendixes 01 and 02, dated July 30, 2015.

(t) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

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

(ii) AMOC ANM–116–14–180 R1, dated February 21, 2014, is approved as an AMOC for the corresponding provisions of this AD.

(iii) AMOC ANM–116–14–429, dated September 25, 2014, is not approved as an AMOC for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(u) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0009, dated January 16, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3701.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (v)(6) and (v)(7) of this AD.

(v) Material Incorporated by Reference

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

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on December 27, 2016.

(i) Airbus Service Bulletin A330–29–3125, Revision 03, including Appendixes 01 and 02, dated April 8, 2016.

(ii) Airbus Service Bulletin A340–29–4096, Revision 02, including Appendixes 01 and 02, dated April 8, 2016.

(4) The following service information was approved for IBR on January 31, 2014 (78 FR 78694, December 27, 2013).

(i) Airbus Alert Operators Transmission A29L001–12, dated October 11, 2012.

(ii) Airbus Mandatory Service Bulletin A330–29–3111, Revision 02, dated June 23, 2011.

(iii) Airbus Mandatory Service Bulletin A340–29–4086, Revision 02, dated June 23, 2011.

(5) The following service information was approved for IBR on December 14, 2009 (74 FR 62208, November 27, 2009).

(i) Airbus Alert Operators Telex A330–29A3111, Revision 1, dated October 8, 2009. Only the first page of this document contains the document number, revision level, and date; no other pages of this document contain this information.

(ii) Airbus Alert Operators Telex A340–29A4086, Revision 1, dated October 8, 2009. Only the first page of this document contains the document number, revision level, and date; no other pages of this document contain this information.

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

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

(8) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 12, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–25745 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7421; Directorate Identifier 2015–NM–145–AD; Amendment 39–18705; AD 2016–22–16]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, and 702), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by a determination that wear and possible leakage of the high-pressure seal in the cylinder of the No. 3 hydraulic system reservoir could occur and cause high hydraulic fluid temperature and/or prevent the system from reaching normal operating pressure. This AD requires repetitive operational checks for wear and leakage of the high-pressure seal in the cylinder of the reservoir of the No. 3 hydraulic system, and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 27, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 27, 2016.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com*; Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7421.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7421; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, and 702), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. The NPRM published in the **Federal Register** on July 1, 2016 (81 FR 43122) (''the NPRM''). The NPRM was prompted by a determination that wear and possible leakage of the high-pressure seal in the cylinder of the No. 3 hydraulic system reservoir could occur and cause high hydraulic fluid temperature and/or prevent the system from reaching normal operating pressure. The NPRM proposed to require repetitive operational checks for wear and leakage of the high-pressure seal in the cylinder of the reservoir of the No. 3 hydraulic system, and corrective actions if necessary. We are issuing this AD to detect and correct wear and leakage of the high-pressure seal in the cylinder of the reservoir of the No. 3 hydraulic system, which can result in high hydraulic fluid temperature. High hydraulic fluid temperature combined with a temperature transducer malfunction could result in un-annunciated overheating of the hydraulic system and consequent ignition sources inside the fuel tank, which, combined with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–27, dated September 14, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, and 702), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

It was discovered that the high-pressure seal in the cylinder of the No. 3 hydraulic system reservoir with P/N 960450–1 could wear and leak. This can cause high hydraulic fluid temperature and/or prevent the system from reaching normal operating pressure. High hydraulic fluid temperature, in combination with a temperature transducer malfunction, could result in an unannunciated overheat of the hydraulic system that could result in a potential ignition source within the fuel system.

This [Canadian] AD mandates the repetitive operational check of the hydraulic system No. 3 fluid temperature indication as an interim mitigating action.

Required actions include repeating any operational check that fails until the operational check passes. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7421.

Comments

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

Clarification of Applicability in This AD

Bombardier, Inc. Model CL–600–2D15 airplanes are derivatives of the Model CL–600–2D24 and should have been included in paragraph (c)(2) of the proposed AD. Therefore, Model CL–600–2D15 is added to paragraph (c)(2) of this AD. The serial number range specified in paragraph (c)(2) of the proposed AD remains unchanged.

Clarification of Unsafe Condition

In the SUMMARY and Discussion sections of the NPRM and paragraph (e) of the proposed AD, we specified that the AD was to detect and correct a malfunctioning temperature indication of the No. 3 hydraulic system. However, the operational check is for wear and leakage of the high-pressure seal in the cylinder of the reservoir of the No. 3 hydraulic system, which can result in high hydraulic fluid temperature. We have revised the SUMMARY and Discussion sections of the final rule and paragraph (e) of this AD accordingly.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the change described previously and minor editorial changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 670BA–29–018, Revision A, dated October 13, 2015. The service information describes procedures for performing an operational check for wear and leakage of the high-pressure seal in the cylinder of the reservoir of the No. 3 hydraulic system. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 509 airplanes of U.S. registry.

We also estimate that it takes about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $43,265, or $85 per airplane.

We have received no definitive data that enables us to provide a cost estimate for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–22–16 Bombardier, Inc.: Amendment 39–18705; Docket No. FAA–2016–7421; Directorate Identifier 2015–NM–145–AD.

(a) Effective Date

This AD is effective December 27, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Bombardier, Inc. airplanes identified in paragraph (c)(1), (c)(2), or (c)(3) of this AD, certificated in any category, equipped with No. 3 hydraulic system reservoir having part number 960450–1.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701, and 702) airplanes, having serial numbers 10002 through 10999 inclusive.

(2) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, having serial numbers 15001 through 15990 inclusive.

(3) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, having serial numbers 19001 through 19990 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Reason

This AD was prompted by a determination that wear and possible leakage of the high-pressure seal in the cylinder of the No. 3 hydraulic system reservoir could occur and cause high hydraulic fluid temperature and/or prevent the system from reaching normal operating pressure. We are issuing this AD to detect and correct wear and leakage of the high-pressure seal in the cylinder of the reservoir of the No. 3 hydraulic system, which can result in high hydraulic fluid temperature. High hydraulic fluid temperature combined with a temperature transducer malfunction could result in un-annunciated overheating of the hydraulic system and consequent ignition sources inside the fuel tank, which, combined with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Operational Check and Repair, if Necessary

Within 660 flight hours or 4 months after the effective date of this AD, whichever occurs first: Perform an operational check for wear and leakage of the high-pressure seal in the cylinder of the reservoir of the No. 3 hydraulic system, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–29–018, Revision A, dated October 13, 2015. If the operational check fails, before further flight, do applicable corrective actions and repeat the operational check and applicable corrective actions until the operational check passes. Repeat the operational check thereafter at intervals not to exceed 660 flight hours or 4 months, whichever occurs first.

(h) Credit for Previous Actions

This paragraph provides credit for the applicable actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 670BA–29–018, dated June 25, 2015.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–27, dated September 14, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7421.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

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

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 670BA–29–018, Revision A, dated October 13, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1 866 538 1247 or direct-dial telephone 1 514 855 2999; fax 514 855–7401; email *ac.yul@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 25, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–26618 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9103; Directorate Identifier 2016–NE–18–AD; Amendment 39–18711; AD 2016–23–04]

RIN 2120–AA64

Airworthiness Directives; BRP-Powertrain GmbH & Co KG Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain BRP-Powertrain GmbH & Co KG Rotax 912 F2, 912 F3, 912 F4, 912 S2, 912 S3, 912 S4, 914 F2, 914 F3, and 914 F4 reciprocating engines. This AD requires replacement of any affected carburetor float with a float that is eligible for installation. This AD was prompted by a report of a quality escape in the manufacturing of the affected floats. We are issuing this AD to prevent failure of the carburetor float, failure of the engine, in-flight shutdown, and loss of the airplane.

DATES: This AD becomes effective December 7, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 7, 2016.

We must receive comments on this AD by January 6, 2017.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this AD, contact BRP-Powertrain GmbH & Co KG, Rotaxstrasse 1, A–4623 Gunskirchen, Austria; phone: +43 7246 6010; fax: +43 7246 601 9130; email: *airworthiness@brp.com;* Internet: *http://www.FLYROTAX.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803. For information on the availability of

this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9103.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9103; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Michael Richardson-Bach, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *michael.richardson-bach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9103; Directorate Identifier 2016–NE–18–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2016–0144, dated July 19, 2016 (corrected July 25, 2016) (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Due to a quality escape in the manufacturing process of certain floats, Part Number (P/N) 861185, a partial separation of the float outer skin may occur during engine operations. Separated particles could lead to a restriction of the jets in the carburetor, possibly reducing or blocking the fuel supply to the affected cylinder.
>
> This condition, if not detected and corrected, could lead to in-flight engine shutdown and forced landing, possibly resulting in damage to the aeroplane and injury to the occupants.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9103.

Related Service Information Under 1 CFR Part 51

BRP-Powertrain GmbH & Co KG has issued Alert Service Bulletin ASB–912–069R1/ASB–914–051R1 (one document), Revision 1, dated July 22, 2016. The service information describes procedures for removal and replacement of the carburetor float. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of Austria, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires removal and replacement of the affected carburetor float.

FAA's Determination of the Effective Date

No domestic operators use this product. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Costs of Compliance

We estimate that this AD affects 0 engines installed on aircraft of U.S. registry. We also estimate that it will take about 4 hours per engine to search maintenance records, disassemble the carburetor, and replace the float. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $0.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–23–04 BRP-Powertrain GmbH & Co KG (formerly BRP-Rotax GmbH & Co KG, Bombardier-Rotax GmbH & Co. KG, and Bombardier-Rotax GmbH): Amendment 39–18711; Docket No. FAA–2016–9103; Directorate Identifier 2016–NE–18–AD.

(a) Effective Date

This AD is effective December 7, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to BRP-Powertrain GmbH & Co KG Rotax model 912 F2, 912 F3, 912 F4, 912 S2, 912 S3, and 912 S4 engines, and Rotax 914 F2, 914 F3, and 914 F4 engines with:

(1) Engine serial numbers (S/Ns) listed in Planning Information, Paragraph 1, Criterion A, of BRP-Powertrain GmbH & Co KG Alert Service Bulletin (ASB) ASB–912–069R1/ASB–914–051R1 (one document), Revision 1, dated July 22, 2016.

(2) Carburetor part numbers (P/Ns) and S/Ns listed in Planning Information, Paragraph 1, Criterion B, of BRP-Powertrain GmbH & Co KG ASB ASB–912–069R1/ASB–914–051R1 (one document), Revision 1, dated July 22, 2016; or

(3) Carburetor floats, P/N 861185, that do not have 3 dots molded on the surface, and installed after May 9, 2016.

(d) Reason

This AD was prompted by a report of a quality escape in the manufacturing of the affected carburetor floats. We are issuing this AD to prevent failure of the carburetor float, failure of the engine, in-flight shutdown, and loss of the airplane.

(e) Actions and Compliance

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

(1) Within 25 flight hours (FHs) or 30 days after the effective date of this AD, replace any affected carburetor float with a float that is eligible for installation in accordance with the Accomplishment Instructions, Paragraph 3, of BRP-Powertrain GmbH & Co KG Rotax ASB ASB–912–069R1/ASB–914–051R1 (one document), Revision 1, dated July 22, 2016.

(2) After the effective date of this AD, do not install on any engine a carburetor float, P/N 861185, delivered between May 8, 2016, and July 17, 2016, that does not have 3 dots molded into the surface. If the delivery date is not documented, do not install the part.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(g) Related Information

(1) For more information about this AD, contact Michael Richardson-Bach, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *michael.richardson-bach@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2016–0144, dated July 19, 2016 (corrected July 25, 2016), for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–9103.

(h) Material Incorporated by Reference

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

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) BRP-Powertrain GmbH & Co KG Alert Service Bulletin ASB–912–069R1/ASB–914–051R1 (one document), Revision 1, dated July 22, 2016.

(ii) Reserved.

(3) For BRP-Powertrain GmbH & Co KG service information identified in this AD, contact BRP-Powertrain GmbH & Co KG, Rotaxstrasse 1, A–4623 Gunskirchen, Austria; phone: +43 7246 6010; fax: +43 7246 601 9130; email: *airworthiness@brp.com;* Internet: *http://www.FLYROTAX.com.*

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on November 7, 2016.

Ann C. Mollica,

Acting Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–27922 Filed 11–21–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5034; Directorate Identifier 2015–NM–172–AD; Amendment 39–18702; AD 2016–22–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that lap splices for certain stringers are subject to widespread fatigue damage (WFD). This AD requires repetitive inspections for cracking in the lower fastener row of the lap splices of certain stringers, and repair if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 27, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 27, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5034.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5034; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and

other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gaetano Settineri, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *gaetano.settineri@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. The NPRM published in the **Federal Register** on March 29, 2016 (81 FR 17415) (''the NPRM''). The NPRM was prompted by an evaluation by the DAH indicating that the S–14L and S–14R lap splices are subject to WFD. The NPRM proposed to require repetitive low frequency eddy current inspections for cracking in the lower fastener row of the S–14L and S–14R lap splices, and repair if necessary. We are issuing this AD to detect and correct widespread cracking in the S–14L and S–14R lap splices that could rapidly link up and result in possible rapid decompression and reduced structural integrity of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

Boeing and a commenter, Jordan Ibsen, supported the content of the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing the supplemental type certificate (STC) ST00830SE does not affect compliance with the actions specified in the NPRM.

We agree with the commenter. We have redesignated paragraph (c) of the NPRM as (c)(1) and added a new paragraph (c)(2) to this final rule to state that installation of STC ST00830SE does not affect the ability to accomplish the actions required by this final rule. Therefore, for airplanes on which STC ST00830SE is installed, a ''change in product'' Alternative Method of Compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request To Revise Compliance Time

The European Aviation Safety Agency (EASA) noted that Boeing Alert Service Bulletin 737–53A1352, dated October 2, 2015, specifies that the existing 737–600/700/800/900 Maintenance Planning Document (MPD), Section 9, Airworthiness Limitation Instruction (ALI) Inspection Program, is not sufficient to prevent WFD in the S–14L and S–14R lap splice, lower fastener rows, between station (STA) 360–540 and STA 727–887, as the airplane ages. EASA added that this service information specifies inspections at principal structural elements (PSEs) 53–30–04–6, 53–30–04–6a, 53–60–04–6 and 53–60–04–6a before accumulating 54,000 total flight cycles. However, EASA noted that 737–600/700/800/900 MPD, Section 9, C626AOO 1–CMR Table 9–2, Revision August 2012, requires doing the inspections before accumulating 50,000 flight cycles; which contradicts the initial statement that the ALI inspection program is not sufficient to preclude WFD. EASA concluded that if the current ALI is not sufficient to preclude WFD, then the 50,000 flight cycles should be reduced, rather than increased to 54,000 flight cycles.

We infer the commenter is requesting that we reduce the 54,000 flight-cycle compliance time specified in Boeing Alert Service Bulletin 737–53A1352, Revision 1, dated March 10, 2016 (which is the appropriate source of service information for accomplishing the required actions in this AD). We do not agree with the request to reduce the compliance time. However, we do agree to clarify the WFD analysis. Boeing uses a different methodology than the standard damage tolerance analysis for evaluating structure that is susceptible to WFD. This methodology can sometimes produce a longer initial inspection threshold than the baseline maintenance program, but requires more frequent repetitive inspections, as in the case of the S–14L and S–14R lap splices. Although, for certain airplanes, the initial WFD threshold specified in Boeing Alert Service Bulletin 737–53A1352, Revision 1, dated March 10, 2016, is 4,000 flight cycles more than the ALI threshold; the repetitive inspection interval is reduced by 6,000 flight cycles.

Operators are still required to accomplish the ALI inspections in accordance with 14 CFR 91.403(c). However, if the inspections specified in Boeing Alert Service Bulletin 737–53A1352, Revision 1, dated March 10, 2016, and the ALI inspections overlap (same location, inspection detail, and technique) then the more restrictive of the two programs satisfies both requirements. Since a specific revision of the ALI inspections are required by AD 2013–19–23, Amendment 39–17605 (78 FR 61173, October 3, 2013), Boeing Alert Service Bulletin 737–53A1352, Revision 1, dated March 10, 2016, contains an approved AMOC to AD 2013–19–23, for certain PSEs, after the initial inspections in that service bulletin are accomplished. We have not changed this AD in this regard.

Request for Clarification of Extent of Boeing Organization Designation Authorization (ODA)

Southwest Airlines (SWA) asked for clarification that the Boeing ODA identified in paragraph (i)(3) of the proposed AD can provide an AMOC for any ''repair, modification, or alteration'' that includes the authority to approve existing repairs in the inspection area that inhibit accomplishment of the AD requirements as terminating action to paragraph (g) of the proposed AD. SWA also asked if the ODA has the authority to provide alternative inspection procedures for repaired areas where the inspection in paragraph (g) of the proposed AD cannot be accomplished. Additionally, SWA asked that we clarify that the Boeing ODA identified in paragraph (i)(3) of the proposed AD is able to issue an AMOC for an existing repair at the S–14 lap joint (where the location of the repair inhibits accomplishing the initial inspection), provided the repair was approved by any FAA designation authority and there are a minimum of three fastener rows above and below the lap joint. SWA stated that neither Boeing Alert Service Bulletin 737–53A1352, dated October 2, 2015, nor the NPRM clearly state how to address existing repairs that prevent accomplishment of the inspections specified in paragraph (g) of the proposed AD.

We agree with the commenter that clarification of the extent of the authority of the Boeing ODA is necessary. The Boeing ODA includes the authority to evaluate existing repairs and provide alternative inspection programs in the repaired area, and includes approval of alternative inspections as AMOCs if accomplishment of the inspections required by paragraph (g) of this AD is inhibited. We have not changed this AD in this regard.

We infer that SWA is asking if the Boeing ODA can issue a global AMOC for the referenced repair. The Boeing ODA does not have that authority. We have not received any information from Boeing that defines such a repair that would be considered for a global AMOC. If Boeing provides supporting data, we will evaluate the data to determine if that repair and any associated inspections provide an acceptable level of safety. We have not changed this AD in this regard.

Change to This AD

We have reviewed Boeing Alert Service Bulletin 737–53A1352, Revision 1, dated March 10, 2016, and there are no substantial changes. Therefore, we have included Boeing Alert Service Bulletin 737–53A1352, Revision 1, dated March 10, 2016, as the appropriate source of service information for accomplishing in the actions required by paragraph (g) of this AD. We have also added a new paragraph (h) to this AD to provide credit for actions done prior to the effective date of this AD using Boeing Alert Service Bulletin 737–53A1352, dated October 2, 2015. We have redesignated subsequent paragraphs accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

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

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–53A1352, Revision 1, dated March 10, 2016. The service information describes procedures for low frequency eddy current inspections and repair for cracking in the lower fastener row of the S–14L and S–14R lap splices. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 1,513 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for Group 1 airplanes (1,471 airplanes).	84 work-hours × $85 per hour = $7,140 per inspection cycle.	$0	$7,140 per inspection cycle.	$10,502,940 per inspection cycle.
Inspection for Group 2 airplanes (42 airplanes).	65 work-hours × $85 per hour = $5,525 per inspection cycle.	0	$5,525 per inspection cycle.	$232,050 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–22–13 The Boeing Company: Amendment 39–18702; Docket No. FAA–2016–5034; Directorate Identifier 2015–NM–172–AD.

(a) Effective Date

This AD is effective December 27, 2016.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST00830SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSTC.nsf/0/38B606833BBD98B386257FAA00602538?OpenDocument&Highlight=st00830se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC

ST00830SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the stringer (S)–14L and S–14R lap splices are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct widespread cracking in the S–14L and S–14R lap splices that could rapidly link up and result in possible rapid decompression and reduced structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1352, Revision 1, dated March 10, 2016, do a low frequency eddy current inspection for cracking of the lower fastener row of S–14L and S–14R lap splices, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1352, Revision 1, dated March 10, 2016. Repeat the inspection thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1352, Revision 1, dated March 10, 2016. If any cracking is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(h) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 737–53A1352, dated October 2, 2015.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

For more information about this AD, contact Gaetano Settineri, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *gaetano.settineri@faa.gov.*

(k) Material Incorporated by Reference

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

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 737–53A1352, Revision 1, dated March 10, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 21, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–26621 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3820; Directorate Identifier 2014–SW–024–AD; Amendment 39–18716; AD 2016–23–09]

RIN 2120–AA64

Airworthiness Directives; Various Restricted Category Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for various restricted category helicopters. This AD requires cleaning and visually inspecting certain main rotor (M/R) blades and, depending on the outcome of the inspections, repairing or replacing the M/R blades. This AD was prompted by a report of an M/R blade with multiple fatigue cracks around the blade retention bolt hole. The actions are intended to detect a crack in the M/R blade, and prevent failure of the M/R blade and subsequent loss of helicopter control.

DATES: This AD is effective December 27, 2016.

ADDRESSES: For service information identified in this final rule, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3820; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic evaluation, any comments received, and other information. The street address for

the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Project Manager, Fort Worth Aircraft Certification Office, 10101 Hillwood Pkwy., Fort Worth, Texas 76177; telephone 817–222–5140; email *Charles.C.Harrison@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On April 11, 2016, at 81 FR 21288, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Model TH–1F, UH–1B, UH–1F, UH–1H, and UH–1P helicopters with a M/R blade, part number 204–011–250–005 or 204–011–250–113, installed. The NPRM proposed to require repetitively cleaning and visually inspecting the M/R blades for a crack, corrosion, an edge void, loose or damaged adhesion, and an edge delamination. Depending on the outcome of the inspections, the NPRM proposed repairing or replacing the M/R blades. The actions in the NPRM were prompted by a Bell Helicopter Textron Inc. evaluation of an M/R blade installed on a Model UH–1H helicopter that had multiple fatigue cracks around the blade retention bolt hole. The cracks resulted from a void between the lower grip plate and the grip pad. A ''substantial'' void also was found at the outboard doubler tip on the lower blade surface. A different part-numbered M/R blade of the same type installed on the Model UH–1H helicopter may also be installed on Model TH–1F, UH–1B, UH–1F, and UH–1P helicopters.

These actions are intended to detect a crack in an M/R blade, and prevent failure of the M/R blade, and subsequent loss of helicopter control.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (81 FR 21288, April 11, 2016).

FAA's Determination

We have reviewed the relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information

Bell Helicopter issued Alert Service Bulletin (ASB) No. UH–1H–13–09, dated January 14, 2013, for the Model UH–1H helicopter. ASB No. UH–1H–13–09 specifies a one-time visual inspection, within 10 hours time-in-service (TIS), of the lower grip pad and upper and lower grip plates for cracks, edge voids, and loose or damaged adhesive squeeze-out. ASB No. UH–1H–13–09 also specifies a repetitive and more detailed visual inspection, daily and at every 150 hours TIS, of the lower grip pad, upper and lower grip plates, and all upper and the lower doublers for cracks, corrosion, edge voids, and loose or damaged adhesive squeeze-out.

Bell Helicopter Textron also issued ASB No. 204–75–1 for Model 204B helicopters and ASB No. 205–75–5 for Model 205A–1 helicopters, both Revision C and both dated April 25, 1979. ASB No. 204–75–1 and ASB No. 205–75–5 call for visually inspecting the M/R blades during each daily inspection and repetitively washing the blades and applying WD–40. ASB No. 204–75–1 and ASB No. 205–75–5 also provide instructions for repetitively inspecting the blades every 1,000 hours of operation or every 12 months, whichever occurs first, or within 150 hours or 30 days, whichever occurs first, if the blades have more 1,000 hours of operation or have been in service more than 12 months. While ASB No. 204–75–1 and ASB No. 205–75–5 do not apply to the helicopters that are the subject of this AD, they do apply to the affected M/R blades.

Differences Between This AD and the Service Information

ASB No. UH–1H–13–09 specifies a one-time inspection and then a second repetitive inspection daily and at every 150 hours TIS, and ASB No. 204–75–1 and ASB 205–75–5 call for visually inspecting the M/R blades daily and every 1,000 hours TIS or 12 months, whichever occurs first. This AD requires all inspections at intervals not to exceed 25 hours TIS or two weeks, whichever occurs first. This AD contains more detailed inspection requirements and a more specific inspection area than the instructions in ASB No. UH–1H–13–09. Lastly, ASB No. UH–1H–13–09 applies to Model UH–1H helicopters with M/R blade P/N 204–011–250–113, ASB No. 204–75–1 applies to Model 204B helicopters with M/R blade P/N 204–011–250 (all dash numbers), and ASB No. 205–75–5 applies to Model 205A–1 helicopters with M/R blade P/N 204–011–250 (all dash numbers). This AD applies to Model TH–1F, UH–1B, UH–1F, UH–1H, and UH–1P helicopters with M/R blade P/N 204–011–250–005 or 204–011–250–113.

Costs of Compliance

We estimate that this AD affects 607 helicopters of U.S. Registry and that labor costs average $85 a work-hour. Based on these estimates, we expect the following costs:

- Cleaning and performing all inspections of a set of M/R blades (2 per helicopter) requires a total of ½ work-hour. No parts are needed. At an estimated 24 inspections a year, the cost would be $1,032 per helicopter and $626,424 for the U.S. fleet.
- Replacing an M/R blade requires 12 work hours while parts cost $90,656, for a total cost of $91,676 per blade.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–23–09 Various Restricted Category Helicopters: Amendment 39–18716; Docket No. FAA–2015–3820; Directorate Identifier 2014–SW–024–AD.

(a) Applicability

This AD applies to Model TH–1F, UH–1B, UH–1F, UH–1H, and UH–1P helicopters with a main rotor (M/R) blade, part number 204–011–250–005 or 204–011–250–113, installed.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in an M/R blade, which could result in failure of the M/R blade and subsequent loss of helicopter control.

(c) Effective Date

This AD becomes effective December 27, 2016.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 25 hours time-in-service (TIS) or 2 weeks, whichever occurs first, and thereafter at intervals not to exceed 25 hours TIS or 2 weeks, whichever occurs first, clean the upper and lower exposed surfaces of each M/R blade from an area starting at the butt end of the blade to three inches outboard of the doublers. Using a 3X or higher power magnifying glass and a light, inspect as follows:

(i) Visually inspect the exposed area of the lower grip pad and upper and lower grip plates of each M/R blade for a crack and any corrosion.

(ii) On the upper and lower exposed surfaces of each M/R blade from blade stations 24.5 to 35 for the entire chord width, visually inspect each layered doubler and blade skin for a crack and any corrosion. Pay particular attention for any cracking in a doubler or skin near or at the same blade station as the blade retention bolt hole (blade station 28).

(iii) Visually inspect the exposed areas of each bond line at the edges of the lower grip pad, upper and lower grip plates, and each layered doubler (bond lines) on the upper and lower surfaces of each M/R blade for the entire length and chord width for an edge void, any corrosion, loose or damaged adhesive squeeze-out, and an edge delamination. Pay particular attention to any crack in the paint finish that follows the outline of a grip pad, grip plate, or doubler, and to any loose or damaged adhesive squeeze-out, as these may be the indication of an edge void.

(2) If there is a crack, any corrosion, an edge void, loose or damaged adhesive squeeze-out, or an edge delamination during any inspection in paragraph (e)(1) of this AD, before further flight, do the following:

(i) If there is a crack in a grip pad or any grip plate or doubler, replace the M/R blade with an airworthy M/R blade.

(ii) If there is a crack in the M/R blade skin that is within maximum repair damage limits, repair the M/R blade. If the crack exceeds maximum repair damage limits, replace the M/R blade with an airworthy M/R blade.

(iii) If there is any corrosion within maximum repair damage limits, repair the M/R blade. If the corrosion exceeds maximum repair damage limits, replace the M/R blade with an airworthy M/R blade.

(iv) If there is an edge void in the grip pad or in a grip plate or doubler, determine the length and depth using a feeler gauge. Repair the M/R blade if the edge void is within maximum repair damage limits, or replace the M/R blade with an airworthy M/R blade.

(v) If there is an edge void in a grip plate or doubler near the outboard tip, tap inspect the affected area to determine the size and shape of the void. Repair the M/R blade if the edge void is within maximum repair damage limits, or replace the M/R blade with an airworthy M/R blade.

(vi) If there is any loose or damaged adhesive squeeze-out along any of the bond lines, trim or scrape away the adhesive without damaging the adjacent surfaces or parent material of the M/R blade. Determine if there is an edge void or any corrosion by lightly sanding the trimmed area smooth using 280 or finer grit paper. If there is no edge void or corrosion, refinish the sanded area.

(vii) If there is an edge delamination along any of the bond lines or a crack in the paint finish, determine if there is an edge void or a crack in the grip pad, grip plate, doubler, or skin by removing paint from the affected area by lightly sanding in a span-wise direction using 180–220 grit paper. If there are no edge voids and no cracks, refinish the sanded area.

(viii) If any parent material is removed during any sanding or trimming in paragraphs (e)(2)(vi) or (e)(2)(vii) of this AD, repair the M/R blade if the damage is within maximum repair damage limits, or replace the M/R blade with an airworthy M/R blade.

(f) Special Flight Permits

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Charles Harrison, Project Manager, Fort Worth Aircraft Certification Office, 10101 Hillwood Pkwy., Fort Worth, Texas 76177; telephone 817–222–5140; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

Bell Helicopter Alert Service Bulletin (ASB) No. UH–1H–13–09, dated January 14, 2013, and Bell Helicopter Textron ASB No. 204–75–1 and ASB 205–75–5, both Revision C and both dated April 25, 1979, which are not incorporated by reference, contain additional information about the subject of this final rule. For service information identified in this final rule, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6210, Main Rotor Blades.

Issued in Fort Worth, Texas, on November 4, 2016.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–27767 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4223; Directorate Identifier 2015–NM–108–AD; Amendment 39–18693; AD 2016–22–04]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain

Gulfstream Aerospace Corporation Model GV and GV–SP airplanes. This AD was prompted by a new revision to the Airworthiness Limitations Section (ALS) of the Aircraft Maintenance Manual (AMM) based on fatigue and damage tolerance testing, and updated analysis. This AD requires revising the maintenance or inspection program to incorporate updated inspection requirements and life limits that address fatigue cracking of principal structural elements (PSEs). We are issuing this AD to ensure that fatigue cracking of PSEs is detected and corrected; such fatigue cracking could result in reduced structural integrity of the PSEs and critical components.

DATES: This AD is effective December 27, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 27, 2016.

ADDRESSES: For service information identified in this final rule, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone: 800–810–4853; fax: 912–965–3520; email: *pubs@gulfstream.com*; Internet: *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4223.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4223; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ronald Wissing, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5552; fax: 404–474–5606; email: *ronald.wissing@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Gulfstream Aerospace Corporation Model GV and GV–SP airplanes. The NPRM published in the **Federal Register** on March 14, 2016 (81 FR 13301) (''the NPRM''). The NPRM was prompted by a new revision to the ALS of the AMM, Chapter 05–10–10, based on fatigue and damage tolerance testing, and updated analysis. The NPRM proposed to require revising the maintenance or inspection program to update inspection requirements and life limits that address fatigue cracking of principal structural elements (PSEs). We are issuing this AD to ensure that fatigue cracking of PSEs is detected and corrected; such fatigue cracking could result in reduced structural integrity of the PSEs and critical components.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Specify Referenced Document

Gulfstream requested that we revise the **SUMMARY** section and the Discussion section of the NPRM, and paragraph (e) of the proposed AD, to refer to the AMM, Chapter 05–10–10, which contains updated inspection requirements and life limits.

We agree with the request. We have revised the **SUMMARY** and Discussion sections of this final rule, and paragraph (e) of this AD accordingly.

Request To Remove Certain Language From the NPRM

Gulfstream requested that we revise the FAA's Determination section of the NPRM, which states that the unsafe condition is likely to exist or develop ''in other products of the same type design.'' Gulfstream requested that we remove the quoted language, and pointed out that they believe the statement is irrelevant to the unsafe condition.

We disagree with the commenter's request. Our phrasing is intentional. The finding that the condition is likely to exist or develop in other products of the same type design is necessary to ensure that the AD falls within the scope of 14 CFR part 39 (''Airworthiness Directives''.) (Specifically, see 14 CFR 39.5.) Additionally, the FAA's Determination section of the NPRM is not restated in this final rule. We have not changed this AD regarding this issue.

Request for Clarification of Certain Language From the NPRM

Gulfstream requested clarification regarding which ''operator maintenance documents'' require revision. Gulfstream did not provide any justification for its request.

We agree that clarification is necessary. Regardless of the maintenance program that an operator uses, this AD requires revising the applicable maintenance or inspection program documentation. The owner or operator is responsible for maintaining its fleet in an airworthy condition, including compliance with 14 CFR part 39. This final rule has not been changed in this regard.

Request To Clarify Applicability

Gulfstream requested that we revise the ''Differences Between This Proposed AD and the Service Information'' section of the NPRM. Gulfstream pointed out that they believe the applicability is contradictory to Gulfstream Document GV–GER–9973, Summary of Changes to the GV Series Airworthiness Limitations, Revision C, dated January 8, 2015. Gulfstream also mentioned that it does not believe an operator would be able to log compliance with the proposed AD.

We agree to clarify. The applicability of this AD differs from the effectivity of Gulfstream Document GV–GER–9973, Summary of Changes to the GV Series Airworthiness Limitations, Revision C, dated January 8, 2015, which excludes airplanes on which certain supplemental type certificates (STCs) have been accomplished. Airplanes on which those STCs have been accomplished are included in the applicability of this AD because those airplanes could have inspections and limits that are applicable. If it is determined that an airplane with a listed STC cannot accomplish the requirements of this AD, the operator may request an alternative method of compliance (AMOC) in accordance with paragraph (i) of this AD.

Also, we do not agree with the statement in Gulfstream Document GV–GER–9973, Summary of Changes to the GV Series Airworthiness Limitations, Revision C, dated January 8, 2015, indicating that airplanes with specific STCs installed should be excluded from the effectivity of Gulfstream Document GV–GER–9973, Summary of Changes to

the GV Series Airworthiness Limitations, Revision C, dated January 8, 2015. We have not changed this AD in this regard.

Request To Allow the Use of Later-Approved Service Information

Gulfstream requested that we revise Note 1 to paragraph (g) of the proposed AD. Gulfstream specifically requested adding language that would specify ''or later FAA approved revision'' to clarify operator compliance with the proposed AD.

We do not agree to revise Note 1 to paragraph (g) of this AD to allow use of ''later FAA-approved revisions.'' Note 1 to paragraph (g) of this AD specifies the AMM revisions specifically identified in Gulfstream Document GV–GER–9973, Summary of Changes to the GV Series Airworthiness Limitations, Revision C, dated January 8, 2015. This AD does not require any actions to be done in accordance with the AMM revisions specified in Note 1 to paragraph (g) of this AD. Additionally, we may not refer to any document that does not yet exist. However, we have revised Note 1 to paragraph (g) of this AD to clarify the intent of that note.

Request To Verify the Contact Information for Gulfstream

Gulfstream requested that we verify the contact information used in the **ADDRESSES** section and paragraph (k)(3) of this AD before publication. Gulfstream stated that its contact information and data storage location may change before the publication date of the final rule.

We have verified the contact information used in the **ADDRESSES** section of this final rule, and found that no change is necessary.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

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

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR part 51

We reviewed Gulfstream Document GV–GER–9973, Summary of Changes to the GV Series Airworthiness Limitations, Revision C, dated January 8, 2015. The service information describes inspection requirements and life limits that address fatigue cracking of the PSEs. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 392 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revision of the maintenance or inspection program.	1 work-hour × $85 per hour = $85	$0	$85	$33,320

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–22–04 Gulfstream Aerospace Corporation: Amendment 39–18693; Docket No. FAA–2016–4223; Directorate Identifier 2015–NM–108–AD.

(a) Effective Date

This AD is effective December 27, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Gulfstream Aerospace Corporation Model GV airplanes, certificated in any category, serial numbers 501 through 693 inclusive and serial number 699; and Model GV–SP airplanes, certificated in any category, serial numbers 5001 through 5433 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear; 53, Fuselage; 54, Nacelles/Pylons; 55, Stabilizers; and 57, Wings.

(e) Unsafe Condition

This AD was prompted by a new revision to the Airworthiness Limitations Section (ALS) of the Aircraft Maintenance Manual (AMM), Chapter 05–10–10, based on fatigue and damage tolerance testing, and updated analysis. We are issuing this AD to ensure fatigue cracking of principal structural elements (PSEs) is detected and corrected; such fatigue cracking could result in reduced structural integrity of the PSEs and critical components.

(f) Compliance

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

(g) Revise Maintenance or Inspection Program

Within 12 months after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the airworthiness limitations specified in Gulfstream Document GV–GER–9973, Summary of Changes to the GV Series Airworthiness Limitations, Revision C, dated January 8, 2015. The initial compliance times for the tasks identified in Gulfstream Document GV–GER–9973, Summary of Changes to the GV Series Airworthiness Limitations, Revision C, dated January 8, 2015, are at the applicable times specified in Gulfstream Document GV–GER–9973, Summary of Changes to the GV Series Airworthiness Limitations, Revision C, dated January 8, 2015, or within twelve months after the effective date of this AD, whichever occurs later.

Note 1 to paragraph (g) of this AD: Gulfstream Document GV–GER–9973, Summary of Changes to the GV Series Airworthiness Limitations, Revision C, dated January 8, 2015, specifies the following AMM revisions as additional sources of guidance for the actions required by paragraph (g) of this AD. For Model GV airplanes, AMM Revision 43, dated February 15, 2015; and for Model GV–SP airplanes, G500 or G550 AMM Revision 24, dated February 15, 2015, as applicable.

(h) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Ronald Wissing, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5552; fax: 404–474–5606; email: *ronald.wissing@faa.gov.*

(k) Material Incorporated by Reference

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

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Gulfstream Document GV–GER–9973, Summary of Changes to the GV Series Airworthiness Limitations, Revision C, dated January 8, 2015. The revision level and date of this document are not specified on the title page of the document.

(ii) Reserved.

(3) For Gulfstream Aerospace Corporation service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone: 800–810–4853; fax: 912–965–3520; email: *pubs@gulfstream.com;* Internet: *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.*

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 14, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–25743 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6672; Directorate Identifier 2016–NM–022–AD; Amendment 39–18706; AD 2016–22–17]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 airplanes. This AD was prompted by a report that the grounding jumpers between the environmental control system (ECS) bracket and the current return network (CRN) straps near certain passenger entry doors were not bonded correctly during manufacturing. This AD requires changing the configuration of the grounding jumpers connecting the ECS brackets and CRN straps; measuring the bond resistance; and doing related investigative and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 27, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 27, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6672.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6672; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday,

except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Brendan Shanley, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6492; fax: 425–917–6590; email: *brendan.shanley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 787–8 airplanes. The NPRM published in the **Federal Register** on June 3, 2016 (81 FR 35655) (''the NPRM''). The NPRM was prompted by a report that the grounding jumpers between the ECS bracket and the CRN straps near passenger 1 left and 1 right entry doors were not bonded correctly during manufacturing. The NPRM proposed to require changing the configuration of the grounding jumpers connecting the ECS brackets and CRN straps; measuring the bond resistance; and doing related investigative and corrective actions if necessary. We are issuing this AD to prevent an incorrectly bonded jumper between the ECS bracket and the CRN strap, which does not provide proper grounding to the door frames at doors 1 left and 1 right. If a fault occurs, an electrical shock hazard can exist and could result in serious or fatal injury to passengers and flight crew.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

Boeing stated that it concurs with the content of the NPRM. United Airlines (UAL) stated that the 12-month compliance time is a safe and reasonable timeframe.

Requests To Reference New Service Information and Add Credit

All Nippon Airways and UAL requested that we revise the NPRM to reference Boeing Service Bulletin B787–81205–SB530025–00, Issue 002, dated June 2, 2016 (''B787–81205–SB530025–00 Issue 002''), and give credit for actions accomplished using Boeing Service Bulletin B787–81205–SB530025–00, Issue 001, dated July 17, 2014 (''B787–81205–SB530025–00 Issue 001'').

We agree with the commenters' requests. B787–81205–SB530025–00 Issue 002 clarifies instructions and specifies the category of fay seal application. No additional work is required by B787–81205–SB530025–00 Issue 002. B787–81205–SB530025–00 Issue 002 has steps that are labeled as Required for Compliance (RC).

We have revised paragraphs (c) and (g) of this AD to reference B787–81205–SB530025–00 Issue 002, and added new paragraph (h) of this AD to provide credit for actions accomplished prior to the effective date of this AD using B787–81205–SB530025–00 Issue 001. We have redesignated subsequent paragraphs accordingly. We have added new paragraph (i)(4) of this AD to address the steps marked RC in B787–81205–SB530025–00 Issue 002.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

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

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed B787–81205–SB530025–00 Issue 002. The service information describes procedures for changing the configuration of the grounding jumpers connecting the ECS brackets and CRN straps; measuring the bond resistance; and related investigative and corrective actions if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 6 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation	6 work-hours × $85 per hour = $510	$100	$610	$3,660

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

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–22–17 The Boeing Company: Amendment 39–18706; Docket No. FAA–2016–6672; Directorate Identifier 2016–NM–022–AD.

(a) Effective Date

This AD is effective December 27, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8 airplanes, certificated in any category, as identified in Boeing Service Bulletin B787–81205–SB530025–00, Issue 002, dated June 2, 2016 (''B787–81205–SB530025–00 Issue 002'').

(d) Subject

Air Transport Association (ATA) of America Code 53; Fuselage.

(e) Unsafe Condition

This AD was prompted by a report that the grounding jumpers between the environmental control system (ECS) bracket and the current return network (CRN) straps near passenger 1 left and 1 right entry doors were not bonded correctly during manufacturing. We are issuing this AD to prevent an incorrectly bonded jumper between the ECS bracket and the CRN strap, which does not provide proper grounding to the door frames at doors 1 left and 1 right. If a fault occurs, an electrical shock hazard can exist and could result in serious or fatal injury to passengers and flight crew.

(f) Compliance

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

(g) Grounding Jumper Revision

Within 12 months after the effective date of this AD: Change the configuration of the grounding jumpers connecting the ECS brackets and CRN straps, including measuring the bond resistance and doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of B787–81205–SB530025–00 Issue 002. Do all applicable related investigative and corrective actions before further flight.

(h) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin B787–81205–SB530025–00, Issue 001, dated July 17, 2014.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

For more information about this AD, contact Brendan Shanley, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6492; fax: 425–917–6590; email: *brendan.shanley@faa.gov.*

(k) Material Incorporated by Reference

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

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Service Bulletin B787–81205–SB530025–00, Issue 002, dated June 2, 2016.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 25, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–26614 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9101; Airspace Docket No. 16–ASO–14]

Amendment of Class D and Class E Airspace; Savannah, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends Class D and Class E airspace at Savannah, GA, by adjusting the geographic coordinates of Hunter Army Airfield (AAF), and updating the name of Savannah/Hilton Head International Airport. The boundaries and operating requirements of these airports remain the same.

DATES: Effective 0901 UTC, January 5, 2017. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

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

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D and Class E airspace in the Savannah, GA, area.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by adjusting the geographic coordinates of Hunter Army Airfield, and recognizing the name change of Savannah/Hilton Head International Airport (formerly Savannah International Airport) to be in concert with the FAA's aeronautical database.

This is an administrative change and does not affect the boundaries, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO GA D Savannah, GA [Amended]

Hunter AAF
(Lat. 32°00′36″ N., long. 81°08′46″ W.)
Savannah/Hilton Head International Airport, GA
(Lat. 32°07′39″ N., long. 81°12′08″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of Hunter AAF; excluding that portion of the overlying Savannah, GA, Class C airspace area and that airspace north of lat. 32°02′30″ N. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Area Airspace

* * * * *

ASO GA E2 Savannah, GA [Amended]

Hunter AAF
(Lat. 32°00′36″ N., long. 81°08′46″ W.)
Savannah/Hilton Head International Airport, GA
(Lat. 32°07′39″ N., long. 81°12′08″ W.)

Within a 5-mile radius of Savannah/Hilton Head International Airport and within a 4.5-mile radius of Hunter AAF. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 Savannah, GA [Amended]

Hunter AAF
(Lat. 32°00′36″ N., long. 81°08′46″ W.)

Savannah/Hilton Head International Airport, GA

(Lat. 32°07′39″ N., long. 81°12′08″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Savannah/Hilton Head International Airport and within a 7-mile radius of Hunter AAF.

Issued in College Park, Georgia, on November 7, 2016.

Ryan W. Almasy,

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

[FR Doc. 2016–27856 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31103; Amdt. No. 3719]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 22, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 22, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a

''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on October 21, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 8 December 2016

Hastings, NE, Hastings Muni, RNAV (GPS) RWY 14, Orig-B
Las Cruces, NM, Las Cruces Intl, ILS OR LOC RWY 30, Amdt 3A
Shirley, NY, Brookhaven, RNAV (GPS)-A, Orig
Shirley, NY, Brookhaven, RNAV (GPS) Y RWY 24, Amdt 1A, CANCELED
Shirley, NY, Brookhaven, RNAV (GPS) Z RWY 24, Orig-A, CANCELED
Houston, TX, George Bush Intercontinental/Houston, RNAV (RNP) Y RWY 26R, Orig-C

Effective 5 January 2017

Redding, CA, Redding Muni, Takeoff Minimums and Obstacle DP, Amdt 5B
Redding, CA, Redding Muni, VOR RWY 34, Amdt 10F
Atlanta, GA, Dekalb-Peachtree, VOR/DME RWY 21L, Amdt 2C, CANCELED
Eastman, GA, Heart of Georgia Rgnl, NDB RWY 2, Amdt 3, CANCELED
Dwight, IL, Dwight, RNAV (GPS) RWY 27, Orig, CANCELED
Dwight, IL, Dwight, Takeoff Minimums and Obstacle DP, Orig, CANCELED
Garden City, KS, Garden City Regional, NDB RWY 35, Orig-A, CANCELED
Garden City, KS, Garden City Regional, VOR RWY 35, Amdt 7A, CANCELED
Flint, MI, Bishop Intl, VOR RWY 9, Orig, CANCELED
Flint, MI, Bishop Intl, VOR RWY 27, Orig-A, CANCELED
Saginaw, MI, MBS Intl, VOR RWY 5, Amdt 14A, CANCELED
Saginaw, MI, MBS Intl, VOR RWY 23, Amdt 14A, CANCELED
Saginaw, MI, MBS Intl, VOR RWY 32, Amdt 9B, CANCELED
Lewistown, MT, Lewistown Muni, RNAV (GPS) RWY 8, Amdt 2
Lewistown, MT, Lewistown Muni, RNAV (GPS) RWY 26, Amdt 1
Lewistown, MT, Lewistown Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Lewistown, MT, Lewistown Muni, VOR RWY 8, Amdt 16
Casselton, ND, Casselton Robert Miller Rgnl, VOR/DME RWY 31, Amdt 1A
Hastings, NE, Hastings Muni, VOR RWY 4, Amdt 6A, CANCELED
Kearney, NE, Kearney Rgnl, VOR RWY 13, Amdt 2B, CANCELED
Kearney, NE, Kearney Rgnl, VOR RWY 36, Amdt 10, CANCELED
Rochester, NH, Skyhaven, Takeoff Minimums and Obstacle DP, Amdt 6A
Alamogordo, NM, Alamogordo-White Sands Rgnl, CORONA TWO GRAPHIC DP
Alamogordo, NM, Alamogordo-White Sands Rgnl, RNAV (GPS) RWY 4, Amdt 1
Alamogordo, NM, Alamogordo-White Sands Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1A
Alamogordo, NM, Alamogordo-White Sands Rgnl, VOR RWY 4, Amdt 3
Santa Fe, NM, Santa Fe Muni, ILS OR LOC RWY 2, Amdt 7
Santa Fe, NM, Santa Fe Muni, RNAV (GPS) RWY 2, Amdt 1
Santa Fe, NM, Santa Fe Muni, RNAV (GPS) RWY 15, Amdt 1
Santa Fe, NM, Santa Fe Muni, RNAV (GPS) RWY 20, Amdt 1
Santa Fe, NM, Santa Fe Muni, RNAV (GPS) RWY 28, Amdt 1
Santa Fe, NM, Santa Fe Muni, RNAV (GPS) RWY 33, Amdt 1
Perryton, TX, Perryton Ochiltree County, Takeoff Minimums and Obstacle DP, Amdt 1
Everett, WA, Snohomish County (Paine Fld), RNAV (GPS) RWY 34L, Amdt 2
Manitowoc, WI, Manitowoc County, VOR RWY 17, Amdt 15, CANCELED
Marshfield, WI, Marshfield Muni, NDB RWY 5, Amdt 14B, CANCELED

[FR Doc. 2016–27699 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31105; Amdt. No. 3721]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 22, 2016. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 22, 2016.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part § 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on November 4, 2016.

John S. Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 8 December 2016

Grass Valley, CA, Nevada County Air Park, GPS RWY 7, Orig-A
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) Y RWY 30, Amdt 5B
Oakland, CA, Metropolitan Oakland Intl, RNAV (RNP) Z RWY 30, Amdt 3B
Keokuk, IA, Keokuk Muni, RNAV (GPS) RWY 14, Orig-C
Cumberland, MD, Greater Cumberland Rgnl, RNAV (GPS) RWY 23, Amdt 1
Philadelphia, PA, Philadelphia Intl, ILS OR LOC RWY 27L, Amdt 13
Philadelphia, PA, Philadelphia Intl, ILS V RWY 9R (CONVERGING), Amdt 5
Philadelphia, PA, Philadelphia Intl, ILS Z OR LOC Z RWY 9R, ILS Z RWY 9R (SA CAT I), ILS Z RWY 9R (CAT II), ILS Z RWY 9R (CAT III), Amdt 10
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 27L, Amdt 2
Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Y RWY 9R, Amdt 3
State College, PA, University Park, VOR–B, Amdt 11
Wilkes-Barre/Scranton, PA, Wilkes-Barre/Scranton Intl, ILS OR LOC RWY 4, Amdt 38

Effective 5 January 2017

Kaltag, AK, Kaltag, Takeoff Minimums and Obstacle DP, Orig-A

New Stuyahok, AK, New Stuyahok, Takeoff Minimums and Obstacle DP, Amdt 1A
Albany, GA, Southwest Georgia Rgnl, ILS OR LOC RWY 4, Amdt 12
Chicago/Aurora, IL, Aurora Muni, ILS OR LOC RWY 33, Orig, CANCELED
Chicago/Aurora, IL, Aurora Muni, LOC RWY 33, Orig
Galesburg, IL, Galesburg Muni, RNAV (GPS) RWY 3, Orig-B
Baltimore, MD, Martin State, LOC RWY 15, AMDT 3C
Santa Fe, NM, Santa Fe Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Glens Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 1, Amdt 2
Delaware, OH, Delaware Muni—Jim Moore Field, RNAV (GPS) RWY 10, Amdt 1
Delaware, OH, Delaware Muni—Jim Moore Field, RNAV (GPS) RWY 28, Amdt 1
Delaware, OH, Delaware Muni—Jim Moore Field, Takeoff Minimums and Obstacle DP, Amdt 1
Delaware, OH, Delaware Muni—Jim Moore Field, VOR RWY 28, Amdt 1
Magnum, OK, Scott Field, RNAV (GPS) RWY 17, Amdt 2
Magnum, OK, Scott Field, RNAV (GPS) RWY 35, Amdt 2
Gainesville, TX, Gainesville Muni, RNAV (GPS) RWY 18, Amdt 2
Gainesville, TX, Gainesville Muni, RNAV (GPS) RWY 36, Orig
Gainesville, TX, Gainesville Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Portage, WI, Portage Muni, Takeoff Minimums and Obstacle DP, Amdt 2

Rescinded: On October 26, 2016 (81 FR 74289), the FAA published an Amendment in Docket No. 31098, Amdt No. 3715 to Part 97 of the Federal Aviation Regulations under section 97.31. The following entry for Midland, TX, effective November 10, 2016, is hereby rescinded in its entirety:

Midland, TX, Midland Intl Air & Space Port, RADAR–1, Amdt 7

[FR Doc. 2016–27698 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. FDA–2016–F–1153]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the food additive regulations to no longer provide for the use of two specific perfluoroalkyl containing substances as oil and water repellents for paper and paperboard for use in contact with aqueous and fatty foods because these uses have been abandoned. This action is in response to a petition filed by Keller and Heckman LLP on behalf of 3M Corporation.

DATES: This rule is effective November 22, 2016. See section VIII for further information on the filing of objections. Submit either electronic or written objections and requests for a hearing by December 22, 2016.

ADDRESSES: You may submit objections and requests for a hearing as follows.

Electronic Submissions

Submit electronic objections in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your objection, that information will be posted on *http://www.regulations.gov.*

• If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper objections submitted to the Division of Dockets Management, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–F–1153 for ''Indirect Food Additives: Paper and Paperboard Components.'' Received objections will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit an objection with confidential information that you do not wish to be made publicly available, submit your objections only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vanee Komolprasert, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740–3835, 240–402–1217.

SUPPLEMENTARY INFORMATION:

I. Background

In a document published in the **Federal Register** of April 29, 2016 (81 FR 25625), we announced that we filed a food additive petition (FAP 6B4814) submitted on behalf of 3M Corporation (Petitioner) by Keller and Heckman LLP, 1001 G Street NW., Suite 500 West, Washington, DC 20001. The petition proposed to amend § 176.170 (21 CFR 176.170) to no longer provide for the use of two different perfluoroalkyl containing substances as oil and water repellents for paper and paperboard for use in contact with aqueous and fatty foods because these uses have been intentionally and permanently abandoned. The two substances that are the subjects of the petition are as follows:

(1) Ammonium bis (*N*-ethyl-2-perfluoroalkylsulfonamido ethyl) phosphates, containing not more than 15 percent ammonium mono (*N*-ethyl-2-perfluoroalkylsulfonamido ethyl) phosphates, where the alkyl group is more than 95 percent C_8 and the salts have a fluorine content of 50.2 percent to 52.8 percent as determined on a solids basis; and

(2) Perfluoroalkyl acrylate copolymer (CAS Reg. No. 92265–81–1) containing 35 to 40 weight percent fluorine, produced by the copolymerization of ethanaminium, *N,N,N*-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)-oxy]-, chloride; 2-propenoic acid, 2-methyl-, oxiranylmethyl ester; 2-propenoic acid, 2-ethoxyethyl ester; and 2-propenoic acid, 2[[(heptadecafluoro-octyl)sulfonyl]methyl amino]ethyl ester.

In response to food additive petitions submitted by the Petitioner (33 FR 14544, September 27, 1968; 35 FR 14840, September 24, 1970; 37 FR 9762, May 17, 1972; and 52 FR 3603, February 5, 1987), FDA authorized certain uses of these two substances as food additives under § 176.170.

II. Evaluation of Abandonment

Section 409(i) of the Federal, Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(i)) states that we may by regulation establish the procedure for amending or repealing a food additive regulation, and that this procedure shall conform to the procedure provided in section 409 for the promulgation of such regulations. FDA's regulations specific to the administrative actions for food additives provide that the Commissioner, on his own initiative or on the petition of any interested person, may propose the issuance of a regulation amending or repealing a regulation pertaining to a food additive (§ 171.130(a) (21 CFR 171.130(a))). The regulations further provide that any such petition must include an assertion of facts, supported by data, showing that new information exists with respect to the food additive or that new uses have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the existing regulation or exemption may justify its amendment or appeal. New data must be furnished in the form specified in 21 CFR 171.1 and 171.100 for submitting petitions (§ 171.130(b)). Under these regulations, a petitioner may propose that we amend a food additive regulation if the petitioner can demonstrate that there are ''old uses abandoned'' for the relevant food additive. Such abandonment must be complete and permanent for any intended uses in the U.S. market. While section 409 of the FD&C Act and § 171.130 also provide for amending or revoking a food additive regulation based on safety, an amendment or revocation based on abandonment is not based on safety of the food additive. Instead, the amendment or revocation is based on the fact that regulatory authorization is no longer necessary because the use of the food additive has been permanently and completely abandoned.

Abandonment may be based on the abandonment of certain authorized food additive uses for a substance (*e.g.,* if a substance is no longer used in certain product categories) or on the abandonment of all authorized food additive uses of a substance (*e.g.,* if a substance is no longer being manufactured). If a petition seeks to amend the food additive regulations based on the abandonment of certain uses of the food additive, such uses must be adequately defined so that both the scope of the abandonment and any amendment to the food additive regulation are clear.

The petition submitted on behalf of 3M Corporation includes the following information to support the claim that the uses of the two substances are no longer being introduced into interstate commerce. The Petitioner provides a statement that the Petitioner does not currently manufacture the two substances for food contact use in the United States, and that to the best of the Petitioner's knowledge, the Petitioner was the sole and exclusive domestic and international manufacturer of the two substances for the abandoned uses. In addition, the Petitioner submitted information on its May 2000 voluntary agreement with the U.S. Environmental Protection Agency to phase out production of perfluorooctane sulfonate (PFOS); which is used to produce the two substances (*https://nepis.epa.gov/Exe/ZyPDF.cgi/P100LTG6.PDF?Dockey=P100LTG6.PDF*). According to the petition, the Petitioner completed a voluntary phase-out of PFOS production in 2002. The Petitioner states that it does not intend to manufacture or import, nor does it maintain an inventory for sale or distribution, of the two substances for use in food-contact applications in the United States in the future.

III. Comments on the Filing Notice

We provided 60 days for comments on the filing notice. We received two comments from an individual and a consumer group. Both comments raised two issues, which are discussed in the paragraphs that follow. For ease of reading, we preface each comment discussion with a numbered ''Comment,'' and each response with ''Response.''

(Comment 1) One comment asked why we are amending the regulations if the substances are no longer in use.

(Response) FDA is responding to an FAP, as required under section 409 of the FD&C Act. Amending these food additive regulations addresses the FAP under the process set forth in the FD&C Act. In the case of abandonment, regulatory authorization is no longer necessary for these substances because their use as food additives has been permanently and completely abandoned. Our action also gives interested parties better information about what substances are used as food contact substances.

(Comment 2) Another comment asked FDA to remove the approvals of seven effective food contact notifications for long-chain perfluorinated compounds.

(Response) We decline to address food contact substances that are outside the scope of this food additive petition.

IV. Conclusion

We reviewed the data and information in the petition and other available relevant material to determine whether the use of the two perfluoroalkyl containing substances as oil and water repellents for paper and paperboard for use in contact with aqueous and fatty foods has been permanently and completely abandoned. Based on the available information, we conclude that the use of these substances has been permanently and completely abandoned. Therefore, we are amending 21 CFR part 176 as set forth in this document. Upon the effective date (see **DATES**), these food additive uses are no longer authorized.

V. Public Disclosure

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), we will delete from the documents any materials that are not available for public disclosure.

VI. Analysis of Environmental Impact

We previously considered the environmental effects of this rule, as stated in the **Federal Register** of April 29, 2016, notice of petition for FAP 6B4814. We stated that we had determined, under 21 CFR 25.32(m), that this action ''is of a type that does not individually or cumulatively have a significant effect on the human environment,'' such that neither an environmental assessment nor an environmental impact statement is required. We have not received any new information or comments that would affect our previous determination.

VII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Objections

If you will be adversely affected by one or more provisions of this regulation, you may file with the Division of Dockets Management (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

Any objections received in response to the regulation 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.*

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and re-delegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

■ 1. The authority citation for part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

§ 176.170 [Amended]

■ 2. Amend § 176.170 in the table in paragraph (a)(5) by removing the entries for ''Ammonium bis (*N*-ethyl-2-perfluoroalkylsulfonamido ethyl) phosphates'' and ''Perfluoroalkyl acrylate copolymer.''

Dated: November 17, 2016.

Susan Bernard,

Director, Office of Regulations, Policy and Social Science, Center for Food Safety and Applied Nutrition.

[FR Doc. 2016–28116 Filed 11–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–5650–F–14]

RIN 2577–AC90

Native American Housing Assistance and Self-Determination Act; Revisions to the Indian Housing Block Grant Program Formula

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the Indian Housing Block Grant (IHBG) Program allocation formula authorized by section 302 of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (NAHASDA). Through the IHBG Program, HUD provides federal housing assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. HUD negotiated this final rule with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990. The regulatory changes reflect the consensus decisions reached by HUD and the tribal representatives on ways to improve and clarify the current regulations governing the IHBG Program formula.

DATES: *Effective Date:* December 22, 2016.

FOR FURTHER INFORMATION CONTACT: Heidi J. Frechette, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4126, Washington, DC 20410, telephone number 202–401–7914 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) changed the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) Program. NAHASDA and its implementing regulations, codified at 24 CFR part 1000, recognize tribal self-determination and self-governance while establishing reasonable standards of accountability. Reflective of this, section 106 of NAHASDA provides that HUD shall develop implementing regulations with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570).

Under the IHBG program, HUD makes assistance available to eligible Indian tribes for affordable housing activities. The amount of assistance made available to each Indian tribe is determined using a formula developed as part of the NAHASDA negotiated process. Based on the amount of funding appropriated for the IHBG program, HUD calculates the annual grant for each Indian tribe and provides this information to the Indian tribes. Indian tribes are required to submit to HUD an Indian Housing plan that includes, among other things, a description of planned activities and statement of needs. If the Indian Housing Plan complies with statutory and regulatory requirements, the grant is awarded.

Following the enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Pub. L. 110–411, approved October 14, 2008) (NAHASDA Reauthorization Act) HUD established a negotiated rulemaking committee [1] that focused on implementing the NAHASDA Reauthorization Act and prior amendments to NAHASDA, except those provisions which govern the NAHASDA allocation formula. As a result of that negotiated rulemaking, HUD published a final rule on December 3, 2012 (77 FR 71513).

On July 3, 2012 (77 FR 39452) and September 18, 2012 (77 FR 57544), HUD announced its intent to establish a negotiated rulemaking committee for the purpose of reviewing the NAHASDA allocation formula regulations at 24 CFR part 1000, subpart D, and negotiating recommendations for a possible proposed rule modifying the IHBG formula. On July 30, 2013 (78 FR 45903), after considering public comment on the proposed membership, HUD published a **Federal Register** document announcing the final list of members of the IHBG Formula Negotiated Rulemaking Committee (Committee) and announcing the date of the first meeting of the Committee. The Committee consists of 24 designated representatives of tribal governments (or authorized designees of those tribal governments) which, as required by NAHASDA, reflects a balanced representation of Indian tribes geographically and based on size, and two HUD representatives.

In developing this final rule, the Committee met nine times. Committee meetings took place on August 27–28, 2013, September 17–19, 2013, April 23–24, 2014, June 11–13, 2014, July 29–31, 2014, August 26–28, 2014, August 11–13, 2015, January 26–27, 2016, and September 20–21, 2016. The Committee agreed to operate based on consensus rulemaking and its approved charter and protocols. All of the Committee meetings were announced in the **Federal Register** and were open to the public.[2]

During this negotiated rulemaking, the Committee undertook a comprehensive review of the IHBG formula and statutory changes that needed to be addressed in the regulations. With the full and active participation of the tribes, HUD and the Committee identified certain areas of the IHBG formula that required clarification, were outdated, or could be improved and, on May 31, 2016, published a proposed rule (81 FR 34290). With the exception of changes to § 1000.330(b)(ii), the proposed rule reflected the consensus decisions reached by the Committee during the negotiated rulemaking process on the best way to address these issues.

The Committee convened for a 2-day meeting in Oklahoma City, OK, on September 20–21, 2016, to review and consider public comments received on the proposed rule. This final rule takes into consideration the public comments on the proposed rule, and makes some changes, based on the public comments, to the May 31, 2016, proposed rule. It also reflects the consensus decisions reached by HUD and the Committee.

II. Changes and Clarifications Made in This Final Rule

This final rule follows publication of the May 31, 2016, proposed rule and takes into consideration the public comments received on the proposed rule. In response to the public comments, a discussion of which is presented in the following section of this preamble, and in further consideration of issues addressed at the proposed rule stage, HUD and the Committee are making the following regulatory changes at this final rule stage:

- HUD has decided not to move forward with the single non-consensus provision in the proposed rule; the adjustment to the American Community Survey (ACS) proposed in § 1000.330(b). HUD meaningfully considered the public comments and engaged in extensive additional analysis. HUD has decided that the adjustment does not do enough to address volatility associated with small areas to warrant its introduction as a non-consensus adjustment.
- The Committee agreed by consensus to add a new § 1000.318(d) to establish the eligibility criteria for Formula Current Assisted Stock (FCAS) units that are demolished and rebuilt. The provision provides that a unit demolished pursuant to a planned demolition may be considered eligible as a FCAS unit if, after demolition is completed, the unit is rebuilt within one year. The provision provides that demolition is completed when the site of the demolished unit is ready for rebuilding and allows IHBG recipients to request approval for a one-time, one-year extension based on the formula factors in section 302(c)(1) of NAHASDA.
- The Committee agreed to revise § 1000.329(c) which requires that a tribe receiving Minimum Total Grant Allocation of Carryover Funds, certify the presence of households at or below 80 percent of median income, to more closely parallel a similar provision codified at § 1000.328(b)(2).
- The Committee agreed to clarify the undercount adjustment to the U.S. Decennial Census for Reservation and Trust Lands in § 1000.330(b). Specifically, the Committee agreed to change ''Indian Lands in Remote Alaska'' to ''For Remote Alaska as designated by the U.S. Census Bureau, Alaska Formula Areas in Remote Alaska shall be treated as Reservation and Trust Lands for purposes of this paragraph''.

III. The Public Comments

The public comment period for this rule closed on August 1, 2016, and HUD received 22 comments. Included in these 22 comments were 2 sets of identical comments; one set that contained 7 identical comments and a second set that contained 2 identical comments. Comments were submitted by federally recognized Indian tribes, tribal and regional housing authorities, TDHEs, associations comprised of tribes, tribal housing authorities, a law office, a nonprofit devoted to issues of race and ethnicity, and members of the public.

As discussed in this preamble, the Committee met on September 20 and 21, 2016, to review and consider responses to the public comments. This section of the preamble addresses the significant issues raised in the public comments and organizes the comments by subject category, with a brief description of the issue, followed by the Committee's response.

A. Comments Regarding Non-Consensus Provision To Control Total Weights Within ACS (§ 1000.330(b))

Comment: Control weights within the ACS not a valid measure of other variables. Several commenters expressed concern with the adjustment of § 1000.330(b) and stated it is not reasonable to assume that an undercount of one variable, American Indian and Alaska Native (AIAN) persons, should be applied to the other variables.

Response: The Committee acknowledges this was a non-consensus decision taken by HUD. HUD appreciates the comment. HUD proposed the adjustment to reduce some of the likely error in the ACS for small areas caused by county based sampling in the ACS and to address the undercount in the base Decennial

[1] 75 FR 423 (January 5, 2010).

[2] See, 78 FR 45903 (July 30, 2013); 78 FR 54416 (September 4, 2013); 79 FR 14204 (March 13, 2014); 79 FR 28700 (May 23, 2014); 80 FR 30004 (May 26, 2015); 80 FR 33157 (June 11, 2015); 81 FR 881 (January 8, 2016); 81 FR 57506 (August 23, 2016).

Census that is used as a core component of the weighting of ACS data. After careful consideration, however, HUD has decided not to move forward with the adjustment. HUD has determined that it does not do enough to address volatility associated with small areas to warrant its introduction as a non-consensus adjustment.

Comment: *Opposition to implementing a non-consensus adjustment to the ACS data.* Several commenters expressed disappointment with HUD in proposing to implement the reweighting adjustment that is part of § 1000.330(b) despite broad opposition from tribal Committee members. The commenters urged HUD to respect the perspective of the majority of the Committee tribal members and not implement the reweighting proposal. Other commenters stated that HUD should not unilaterally move forward with its own proposals if no consensus is found but rather should rely on the existing language of the regulations since that approach was the result of a prior consensus between HUD and the tribes.

Several commenters also stated that they do not support the implementation of any non-consensus items, and referred to the adoption of the ACS adjustment. Several of these commenters also concluded that implementing a non-consensus item severely dilutes the significance of this process, is not a sign of negotiating in good faith, and is inconsistent with what constitutes Government-to-Government consultation. One of the commenters also stated that the summary section of the proposed rule was inaccurate by stating that the proposed regulatory changes reflect the consensus decision of the Committee since the adoption of the data source itself was not made by consensus, and recommended that HUD revise the sentence to reflect that the proposal included regulatory changes that did not achieve consensus.

Response: HUD appreciates the concerns of the commenters but disagrees with the suggestion that moving forward unilaterally with this non-consensus item reflects a lack of good faith or detracts from the Government-to-Government relationship that HUD has with the tribes. HUD has agreed, however, to remove the ACS adjustment (control total weights within the ACS).

B. Comments Regarding Minimum Total Grant Allocation of Carryover Funds (§ 1000.329).

Comment: The Minimum Total Grant Allocation of Carryover Funds is inconsistent with NAHASDA. One commenter expressed opposition to the Minimum Total Grant Allocation of Carryover Funds stating that it is an arbitrary allocation rather than a need-based allocation, as required by NAHASDA. The commenter stated that adjusting the formula simply because carryover funds are added is a departure from the need-based model and will mean funding is withheld from tribes with more demonstrable need. The commenter suggested that if carryover funds cannot be added to the total allocation, then the funds should be used for drug clean-up grants.

Response: The Committee considered this comment and disagrees that § 1000.329 is arbitrary and not based on need. In considering the provision, the Committee sought to augment the minimum allocation amount already provided under the need component in § 1000.328 in the event there are funds voluntarily returned or not accepted by other tribes in the prior year (''carryover''). Just as § 1000.328 recognized that allocations in minimum amounts are needed if there exist eligible households below 80 percent of median income in the tribe's formula area, proposed § 1000.329 simply recalibrates the minimum if there are carryover funds. The Committee also notes that HUD does not have the statutory authority to award funds specifically to fund drug control/elimination grants, however, grantees may choose to spend their IHBG funds to remediate units as doing so is an eligible activity in the IHBG program.

Comment: Minimum Total Grant Allocation of Carryover Funds should be clarified. Another commenter recommended that § 1000.329(c) be clarified to read, ''To be eligible, a tribe must certify in its Indian Housing Plan the presence of any eligible households at or below 80 percent of median income.''

Response: The Committee considered this comment and agrees that § 1000.329(c) be clarified to parallel § 1000.328.

C. Comments Regarding the Data Sources for the Need Variables (§ 1000.330).

Comment: Counting and averaging of the U.S. Decennial Census data. Several commenters recommended the U.S. Decennial Census data be adjusted for both over and undercounts for accuracy. The commenters also requested clarification on who determines what is ''significant'' since it is not defined in the regulations. Other commenters recommended that HUD must determine the actual undercounts on a reservation-by-reservation basis instead of utilizing an average undercount for its adjustment.

Response: The Committee considered these comments and agreed that the regulation should not make adjustments to add for any statistically significant overcount. The Committee during its eighth session considered how to address undercounts and overcounts reported by the U.S. Census Bureau. The Committee, by consensus, determined that adjustments to data should be made for statistically significant undercounts. The Committee did not reach consensus on any adjustments to data based upon overcounts. The Census reports reviewed during the convening of the Committee did not indicate any statistically significant overcounts. The U.S. Census Bureau determines whether overcounts or undercounts are statistically significant. Currently there is no way to determine actual undercounts or overcounts on a reservation-by-reservation basis.

Comment: The term ''Indian Lands'' is ambiguous and needs to be clarified in the undercount adjustment to the U.S. Decennial Census. Several commenters stated that the term ''Indian Lands'' in § 1000.330(b) needs to be clarified as it pertains to Alaska Native villages in remote Alaska. One commenter stated that the term was not meant to mean ''Indian Country'' but was meant to refer to the lands within the formula area of the villages (Alaska Native Village Statistical Areas). The commenter recommended that the Committee not change this section if this is the understanding of how this term would be interpreted. The commenter requested, however, that the term be clarified as including those lands comprising the formula areas of the Alaska Native Villages if there is confusion regarding this interpretation.

Another commenter stated that aggravating the ambiguity is the absence of any definition of the term ''Indian Lands'' in NAHASDA or the NAHASDA regulations, and the various uses of the term by other Federal agencies (*e.g.,* the Department of Energy under the Alaska Native Claims Settlement Act, 25 U.S.C. 3501). This commenter stated that there are no reservation or trust lands in Remote Alaska other than the Metlakatla Reservation, and concluded that confining the term to reservations and trust lands in this unique context would render the provision meaningless. The commenters asserted that the Committee adopted the term ''Indian Lands'' in the committee briefings to also include Alaskan Native Village areas in remote Alaska and proposed a documented definition or a technical amendment

specifically stating that Alaskan Native Villages or Indian Lands in remote Alaska shall be treated as reservation and trust lands.

Response: The Committee agreed with the commenters on the ambiguity of the term ''Indian Lands,'' and clarified the regulation at § 1000.330 by changing ''Indian Lands in Remote Alaska'' to ''For Remote Alaska as designated by the U.S. Census Bureau, Alaska Formula Areas in Remote Alaska shall be treated as Reservation and Trust Lands'' for purposes of this paragraph.

Comment: Require HUD to issue a report on data source and update data source if necessary (Proposed § 1000.330(d)). A commenter recommended that the volatility control provision, in § 1000.331, be retained if HUD proceeds with using the ACS, as adjusted, to determine the variables described in § 1000.324. The commenter also recommended that the rule require HUD to renegotiate this provision if it determines that the use of ACS data or U.S. Census Bureau county level population estimates for Native Americans results in inaccurate figures. Specifically, the commenter recommended the addition of the following provision:

§ 1000.330(d). After fiscal year 2018 but before fiscal year 2023, HUD shall prepare a report on the use of the data sources in this Section, including whether the data sources provide reliable information on the funding variables described on § 1000.324, and provide tribes an opportunity to comment on the report. If the report determines that the data sources used in this section result in unreliable data, HUD shall propose a more reliable data source.

Response: The Committee considered this comment and agreed not to add the language proposed by the commenter. In reaching this decision, the Committee notes that the language recommended is ambiguous. Additionally, the IHBG Negotiated Rulemaking Data Study Group extensively evaluated all data sources used in the formula during negotiated rulemaking. The resulting report outlining the Committee's Data Study Group's process and final recommendations to the Committee was published with the proposed rule.

Comment: The American Community Survey (ACS) data is unreliable. One commenter stated that they did not support § 1000.330(b)(ii) because the ACS is neither reflective nor representative of the commenter's tribal community. The commenter also stated that the flaws in the ACS data cannot be fixed by a weighting that uses the ACS count of American Indian and Native persons. Another commenter questioned the accuracy of ACS data given the sampling, response and inclusion rates, as well as its failure to capture tribal enrollment information. The commenter concluded that reliance on these data would harm poorer tribes with the worst housing, and thus disproportionately affect the funding accessible to them via the need component of the IHBG funding formula.

Response: The Committee's Data Study Group did a thorough review of the ACS as a data source. Although consensus was not achieved on using the ACS as a data source, HUD has determined that the ACS is the most current and accurate data available for measuring the need for funding under the IHBG. The ACS data are more current than the data currently being used in the formula and are available for all eligible tribes, as discussed in the final Data Study Group Report. HUD recognizes that the ACS data does have some limitations. In addition, the 4.88 percent undercount of the 2010 Decennial Census for Reservation and Trust Lands is potentially present in the ACS because the ACS uses the Decennial Census, adjusted for post Census population growth, as its base data for weighting the ACS.

HUD is committed to work with the Census Bureau to improve the accuracy of the counts. Tribes may still challenge the ACS data.

D. Comments Regarding Volatility Control (§ 1000.331).

Comment: The Committee should clarify the volatility control provision. Several commenters stated that a strict construction of § 1000.331(a) would defeat the intent of the Committee in agreeing to the provision. According to these commenters, the intent of § 1000.331(a) was to limit the impact of adopting a new data source (ACS) on those tribes that will be significantly and adversely affected by that conversion. The commenters wrote that as written, however, the relief would only be available if the tribe can show that the greater than 10 percent needs grant decline occurred ''solely as a direct result of the introduction'' of the ACS. The commenters stated that the record of the Committee proceedings indicates that was not the Committee's intent. One commenter presented several examples, including one which provided that if a tribe suffered a 65 percent reduction and can trace only 64.9 percent of its reduction to adoption of the ACS it would be disqualified from receiving any volatility control assistance, because its decline would not have been ''solely as a direct result of the introduction'' of ACS. The commenters recommended that § 1000.331(a) be revised by substituting ''primarily as a result'' for ''solely as a direct result.'' These same commenters also recommended that the intent of § 1000.331(a) be clarified by adding a definition for ''primarily as a result'' to read, ''As used in this section, 'primarily as a result' means that the introduction of a new data source, in-and-of-itself, would result in greater than a 10 percent decline in the tribe's need component allocation, irrespective of any declines attributable to causes other than introduction of that data source.''

Response: Ensuring that grantees have stable allocations is a priority for the Committee. The original intent of § 1000.331 was to protect tribes against significant fluctuations with the introduction of the Decennial Census and ACS data. When HUD introduces a new data set, HUD will not apply volatility control. When HUD introduces a new data source, HUD will apply volatility control. When HUD first introduces ACS data into the IHBG formula in Fiscal Year 2018, HUD will apply volatility control. When a new ACS data set is available from year to year, HUD will not apply volatility control. When new Decennial Census data is available and is introduced into the formula, HUD will apply volatility control (*e.g.,* 2020 Decennial Census).

HUD understands, however, the concern expressed by the commenters. HUD is able to isolate the impact on tribes' funding allocations that is due to the introduction of the ACS as a new data source. This ability to isolate the impact, and apply the control on the basis of that impact alone alleviates the concern of the commenters. HUD will continue to apply the same methodology to calculate the impacts of introduction of a new data source to avoid the concerns raised by the commenters with the agreed upon language.

E. Comments Regarding Demolition and Rebuilding of Formula Current Assisted Stock (FCAS) Units (§ 1000.318(d))

Comment: Recommended language for demolition and rebuilding should provide maximum flexibility to tribes. One commenter supported the preamble definition of demolition ''as occurring only when a recipient voluntarily demolishes units in order to clear a site for a new replacement unit.'' The commenter also recommended that the Committee define ''demolition'' in a way as to provide maximum flexibility to tribes. Flexibility is important,

according to the commenter, because a significant problem that many tribes face are housing units that are irreparably contaminated by methamphetamine production and tribes must engage in time-consuming testing of a substance that cannot be seen or smelled.

The second problem, according to the commenter, is the potentially limited time for rebuilding the home where the weather conditions can delay or completely halt construction from October through May. Tribes should not lose their FCAS funds if these homes are not rebuilt within the one-year time frame. The commenter recommended, therefore, a definition for demolition that takes these concerns into account and allows tribes and TDHEs maximum flexibility in rehabilitation and reconstruction of FCAS units that are destroyed or demolished due to events beyond the control of the tribe/TDHE.

Response: The Committee appreciates the commenter's recommendation to define demolition in a way that maximizes flexibility for tribes. As stated, the intent of § 1000.318(d) is to incentivize tribes to rebuild expeditiously within a reasonable time period. The Committee understands the unique construction constraints faced by some IHBG recipients due to short building seasons, units contaminated by methamphetamine or other contaminants, remote locations and high construction costs and has considered these factors in the structuring of the demolition provision.

Comment: Recommended language for demolition and rebuilding. Another commenter stated that section 302(b)(1)(C) of NAHASDA triggers a one-year time period at the time of demolition, regardless of how demolition occurs. The commenter stated that section 302(b)(1)(C) does not require completion of the unit within the one-year period, but requires that the construction process begin within one year of the demolition. Based on this interpretation of the statute, the commenter recommended that the Committee adopt the following language:

- If a FCAS unit is demolished, it will continue to be eligible as a FCAS unit if the following conditions are met:
  - Construction of a replacement unit begins within one year of the time the original unit is demolished. If the unit is demolished by the occurrence of a natural disaster or fire, demolition shall be defined to occur on the date of the event. If the unit is demolished by the voluntary act of the recipient, demolition shall be defined to occur on the date that the replacement unit is demolished to a point where construction can commence;
  - The replacement unit is complete within 24 months from the commencement of construction, except that if more than 5 units are being replaced, the time for completion of the units shall be 36 months.

Response: The Committee appreciates the recommendation submitted by the commenter on the demolition provision pursuant to § 1000.318(d). The Committee considered the proposed language but ultimately concluded that the statute requires that rebuilding be completed within one year of the demolition. The Committee agreed by consensus, however, to a revised § 1000.318(d) that provides that the one-year clock does not begin until demolition is complete.

Comment: Recommended language for demolition and rebuilding based on defining the terms ''demolish'' and ''rebuilds''. Another commenter wrote that the purposes of the statute is to create an incentive for tribes to expeditiously rebuild housing units that are so badly damaged, as to require demolition and to give tribes a reasonable period of time to rebuild. The commenter wrote that Congressional intent was to incentivize rebuilding in a reasonable time but balance that goal with the realities that Indian country suffers not only from remoteness but short construction seasons. The commenter recommended that the Committee define the terms ''demolish'' and ''rebuilds'' using a standard dictionary definition and consistent with Congressional intent. With regard to the term ''demolish'' the commenter stated that standard dictionary definitions convey a sense of completeness and define this term as requiring a deliberate, human, caused process. In defining ''rebuilds'' the commenter notes that the statute uses the present active tense. With these foundations, the commenter recommends that the Committee adopt the following provision:

- If an affordable housing unit is demolished and rebuilding occurs within 1 year of demolition of the unit, the unit may continue to be considered Formula Current Assisted Stock.
- As used in this subsection:
  - Demolition'' means the intentional act or process of the tribe, and demolition occurs when the structure is completely destroyed and its component parts, including demolition debris, are removed from the site; and
  - Rebuilding occurs when the tribe has made substantial, initial, on-going site improvements to the site of the replacement housing unit, including laying or altering the foundation.

Response: The Committee appreciates the commenter's thoughtful responses on the demolition issue posed in the proposed rule. Specifically, the comments regarding the past and present tense of the terms ''demolish'' and ''rebuilds'' respectively, as used in the statute, offered the Committee a useful starting point for developing a revised section addressing demolition. The Committee also agrees that the purpose of the statute is to create an incentive for tribes to expeditiously rebuild housing units. The revised demolition regulation agreed to by consensus at § 1000.318(d) incorporates and builds on the comments provided.

F. Other Issues and Comments.

Comment: There is a need for a federally conducted National Tribal Survey. Several commenters recommended that tribes continue to find common ground on changes to the IHBG funding formula and push for the self-determined goal of building tribally driven data sources. These commenters also stated that it is the duty of HUD and the Federal government to assist tribes in seeking data sources that most appropriately reflect and represent the conditions and characteristics of their tribal communities and that this includes providing tribes the training and technical assistance to develop their own tribal data sources for housing and community development purposes.

Other commenters recommended that HUD should consider developing or using a federally conducted national tribal survey to collect demographic and enrollment information for NAHASDA-eligible tribes. According to the commenters, a National Tribal Survey, jointly designed by HUD and tribes, would collect demographic data directly related to the IHBG formula. The commenters wrote that the survey could be administered by the Census Bureau under contract from HUD, much the same way the American Housing Survey is now done for special data related to public housing information. The commenters concluded that there would be many advantages to such a survey, including a focus on information essential for IHBG fund allocation, providing flexibility in survey design to accommodate future changes to the IHBG formula, and using said survey to inform a more accurate allocation of funds in other Indian programs like education and health care.

Response: The Committee emphasizes that the IHBG Negotiated Rulemaking Data Study Group examined the development of a National Tribal

Survey that would rely on tribally driven data sources. The pros and cons of the Committee's analysis are presented in the Final Data Study Group Report and, more particularly, the individual data source evaluations in the appendices. No consensus could be reached on using any alternative to ACS data, including a National Tribal Survey. HUD has stated that it does not have the resources to design or administer a National Tribal Survey, or to audit data collection efforts to ensure that data from tribal sources is being collected in a fair and equitable manner, and thus unusable in the IHBG formula.

Comment: Impact on other organizations that use the IHBG factors or data. One commenter responded to HUD's request for public comment regarding how the proposed changes to the IHBG formula would potentially impact nonprofits, state and local governments, and other organizations that are not IHBG recipients. The commenter stated that the effect of the IHBG formula on outside stakeholders should have no bearing on the implementation of changes to the IHBG formula. The commenter also stated that the purpose of the IHBG formula is to allocate federal Indian Housing resources to eligible recipients to address the housing needs of Alaska Native and American Indian families and that impact on other entities is not within the scope of factors that HUD may consider in the course of negotiating the IHBG formula.

Response: The Committee is aware that some organizations, such as the U.S. Department of Transportation, use the IHBG formula for various reasons. Nevertheless, the Committee agrees with the commenter that the effect of the IHBG formula on these outside stakeholders should have no bearing on whether such changes are implemented. As stated by the commenter, section 302 of NAHASDA delineates the factors that the Committee must consider in determining the formula. HUD is not authorized to consider in the course of negotiating the IHBG formula how elements of the formula might impact entities that are not IHBG recipients.

Comment: The negotiated rulemaking was successful. One commenter thanked everyone who was involved in the negotiated rulemaking process and described the process as thoughtful and deliberate, and the final product the best that could be expected given the limitations on current funding for the program. The commenter expressed support for all of the final proposed changes, and described the rule as necessary, fair and consistent with the mission of the Committee and the IHBG Program overall, and developed in the spirit of compromise. The commenter concluded that moving to an updated data source is the single greatest achievement of this Committee and urged HUD to adopt this final language and begin implementation as provided in the proposed rule. Another commenter wrote to recognize the many significant, positive outcomes of this negotiated rulemaking. This commenter stated that despite the somewhat distributive nature of this process, HUD and tribes were able to reach consensus on numerous important issues, including the minimum allocations of carryover funds, the undisbursed funds factor, the volatility control and establishing adjustments for undercounts. Both commenters agreed that the negotiated rulemaking process was successful.

Response: The Committee appreciates these comments and agrees that this Negotiated Rulemaking was educational, productive and successful. The Committee also extends its appreciation to each tribal representative and to HUD leadership and staff for their hard work and dedication to the Negotiated Rulemaking process, and believes that this final rule reflects the thoughtful and deliberate work of everyone involved in this rulemaking, The Committee believes that the success of the Negotiated Rulemaking rests on the spirit of cooperation and hard work that tribal representatives and HUD leadership and staff brought to the negotiations.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This final rule was determined not to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and therefore was not reviewed by OMB.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0218. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis for any rule that is 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. The requirements of this rule apply to Indian tribal governments and their tribal housing authorities. Tribal governments and their tribal housing authorities are not covered by the definition of ''small entities'' under the RFA. Accordingly, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule will not impose any federal mandate on any

state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Environmental Review

This rule is a statutorily required establishment of a rate determination that does not constitute a development decision that affects the physical condition of specific project areas or buildings sites. Accordingly, under 24 CFR 50.19(c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number (CFDA) for Indian Housing Block Grants is 14.867, and the CFDA for Title VI Federal Guarantees for Financing Tribal Housing Activities is 14.869.

List of Subjects in 24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 1000 as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 1. The authority citation for 24 CFR part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.;* 42 U.S.C. 3535(d).

■ 2. In § 1000.302, revise paragraph (2)(i) of the definition of ''Formula area'' to read as follows:

§ 1000.302 What are the definitions applicable for the IHBG formula?

* * * * *

Formula area. * * *

(2) * * *

(i) For a geographic area not identified in paragraph (1) of this definition, and for expansion or re-definition of a geographic area from the prior year, including those identified in paragraph (1) of this definition, the Indian tribe must submit, on a form agreed to by HUD, information about the geographic area it wishes to include in its Formula Area, including proof that the Indian tribe, where applicable, has agreed to provide housing services pursuant to a Memorandum of Agreement (MOA) with the tribal and public governing entity or entities of the area, or has attempted to establish such an MOA, and is providing substantial housing services and will continue to expend or obligate funds for substantial housing services, as reflected in its Indian Housing Plan and Annual Performance Report for this purpose.

* * * * *

§ 1000.306 [Amended]

■ 3. In § 1000.306, remove paragraph (c).

■ 4. Revise § 1000.310 to read as follows:

§ 1000.310 What are the components of the IHBG formula?

The IHBG formula consists of four components:

(a) Formula Current Assisted Stock (FCAS) (§ 1000.316);

(b) Need (§ 1000.324);

(c) 1996 Minimum (§ 1000.340); and

(d) Undisbursed IHBG funds factor (§ 1000.342).

■ 5. In § 1000.316, add paragraph (c) to read as follows:

§ 1000.316 How is the Formula Current Assisted Stock (FCAS) Component developed?

* * * * *

(c) *Conversion.* Conversion of FCAS units from homeownership (Mutual Help or Turnkey III) to low-rent or from low-rent to a home ownership program.

(1) If units were converted before October 1, 1997, as evidenced by an amended ACC, then those units will be counted for formula funding and eligibility purposes as the type of unit to which they were converted.

(2) If units were converted on or after October 1, 1997, the following applies:

(i) *Funding type.* Units that converted after October 1, 1997 will be funded as the type of unit specified on the original ACC in effect on September 30, 1997.

(ii) *Continued FCAS eligibility.* Whether or not it is the first conversion, a unit converted after October 1, 1997, will be considered as the type converted to when determining continuing FCAS eligibility. A unit that is converted to low-rent will be treated as a low-rent unit for purposes of determining continuing FCAS eligibility. A unit that is converted to homeownership will be treated as a homeownership unit for purposes of determining continuing FCAS eligibility.

(3) The Indian tribe, TDHE, or IHA shall report conversions on the Formula Response Form.

■ 6. Amend § 1000.318 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding paragraphs (b) and (e) to read as follows:

§ 1000.318 When do units under Formula Current Assisted Stock cease to be counted or expire from the inventory use for the formula?

* * * * *

(b)(1) A Mutual Help or Turnkey III unit not conveyed after the unit becomes eligible for conveyance by the terms of the MHOA may continue to be considered Formula Current Assisted Stock only if a legal impediment prevented conveyance; the legal impediment continues to exist; the tribe, TDHE, or IHA has taken all other steps necessary for conveyance and all that remains for conveyance is a resolution of the legal impediment; and the tribe, TDHE, or IHA made the following reasonable efforts to overcome the impediments:

(i) No later than four months after the unit becomes eligible for conveyance, the tribe, TDHE, or IHA creates a written plan of action, which includes a description of specific legal impediments as well as specific, ongoing, and appropriate actions for each applicable unit that have been taken and will be taken to resolve the legal impediments within a 24-month period; and

(ii) The tribe, TDHE, or IHA has carried out or is carrying out the written plan of action; and

(iii) The tribe, TDHE, or IHA has documented undertaking the plan of action.

(2) No Mutual Help or Turnkey III unit will be considered FCAS 24 months after the date the unit became eligible for conveyance, unless the tribe, TDHE, or IHA provides evidence from a third party, such as a court or state or federal government agency, documenting that a legal impediment continues to prevent conveyance. FCAS units that have not been conveyed due to legal impediments on December 22, 2016 shall be treated as having become eligible for conveyance on December 22, 2016.

* * * * *

(e) A unit that is demolished pursuant to a planned demolition may be considered eligible as a FCAS unit if, after demolition is completed, the unit is rebuilt within one year. Demolition is completed when the site of the demolished unit is ready for rebuilding. If the unit cannot be rebuilt within one year because of relative administrative capacities and other challenges faced by the recipient, including, but not limited to geographic distribution within the Indian area and technical capacity, the Indian tribe, TDHE or IHA may request approval for a one-time, one-year extension. Requests must be submitted

in writing and include a justification for the request.

■ 7. In § 1000.326, revise paragraph (a)(3), redesignate paragraph (c) as paragraph (d), and add a new paragraph (c) to read as follows:

§ 1000.326 What if a formula area is served by more than one Indian tribe?

(a) * * *

(3) In cases where a State recognized tribe's formula area overlaps with the formula area of a Federally recognized Indian tribe, the Federally recognized Indian tribe receives the allocation for the formula area up to its population cap, and the State recognized tribe receives the balance of the overlapping area (if any) up to its population cap.

* * * * *

(c) Upon receiving a request for expansion or redefinition of a tribe's formula area, if approving the request would create an overlap, HUD shall follow the notice and comment procedures set forth in paragraph (2)(ii) of the definition of ''Formula area'' in § 1000.302.

* * * * *

■ 8. Add § 1000.329 to read as follows:

§ 1000.329 What is the minimum total grant allocated to a tribe if there is carryover funds available?

(a) If in any given year there are carryover funds, then HUD will hold the lesser amount of $3 million or available carryover funds for additional allocations to tribes with grant allocations of less than 0.011547 percent of that year's appropriations. All tribes eligible under this section shall receive a grant allocation equal to 0.011547 percent of that year's appropriations.

(b)(1) If the set-aside carryover funds are insufficient to fund all eligible tribes at 0.011547 percent of that year's appropriations, the minimum total grant shall be reduced to an amount which can be fully funded with the available set-aside carryover funds.

(2) If less than $3 million is necessary to fully fund tribes under paragraph (a) of this section, any remaining carryover amounts of the set aside shall be carried forward to the next year's formula.

(c) To be eligible, an Indian tribe must certify in its Indian Housing Plan the presence of any households at or below 80 percent of median income.

(d) For purposes of this section, carryover funds means grant funds voluntarily returned to the formula or not accepted by tribes in a fiscal year.

■ 9. Revise § 1000.330 to read as follows:

§ 1000.330 What are the data sources for the need variables?

(a) The sources of data for the need variables shall be data that are available and collected in a uniform manner that can be confirmed and verified for all AIAN households and persons living in an identified area. Until fiscal year 2018, the data used are 2000 U.S. Decennial Census data and any HUD-accepted Census challenges. The 2000 U.S. Decennial Census data shall be adjusted annually using IHS projections based upon birth and death rate data provided by the National Center for Health Statistics.

(b)(1) Beginning fiscal year 2018, the data source used to determine the AIAN persons variable described in § 1000.324(g) shall be the most recent U.S. Decennial Census data adjusted for any statistically significant undercount for AIAN population confirmed by the U.S. Census Bureau and updated annually using the U.S. Census Bureau county level Population Estimates for Native Americans. For Remote Alaska as designated by the U.S. Census Bureau, Alaska Formula Areas in Remote Alaska shall be treated as Reservation and Trust Lands, unless the U.S. Census Bureau includes Remote Alaska in their Census Coverage Measurement or comparable study. The data under this paragraph (b) shall be updated annually using the U.S. Census Bureau county level Population Estimates for Native Americans.

(2) Beginning fiscal year 2018, the data source used to determine the variables described in paragraphs (a) through (f) of § 1000.324 shall initially be the American Community Survey (ACS) 5-year Estimates.

(c) Indian tribes may challenge the data described in this section pursuant to § 1000.336.

■ 10. Add § 1000.331 to read as follows:

§ 1000.331 How will the impacts from adoption of a new data source be minimized as the new data source is implemented?

(a) To minimize the impact of funding changes based on the introduction of a new data source under § 1000.330, in fiscal year 2018 and each year thereafter, if, solely as a direct result of the introduction of a new data source, an Indian tribe's allocation under the need component of the formula is less than 90 percent of the amount it received under the need component in the immediate previous fiscal year, the Indian tribe's need allocation shall be adjusted up to an amount equal to 90 percent of the previous year's need allocation.

(b) Nothing in this section shall impact other adjustments under this part, including minimum funding, census challenges, formula area changes, or an increase in the total amount of funds available under the need component.

(c) In the event of a decrease in the total amount of funds available under the need component, an Indian tribe's adjusted allocation under paragraph (a) of this section shall be reduced by an amount proportionate to the reduced amount available for distribution under the need component of the formula.

(d) Adjustments under paragraph (b) or (c) of this section shall be made to a tribe's need allocation after adjusting that allocation under paragraph (a) of this section.

■ 11. Revise § 1000.336 as follows:

■ a. In paragraph (a)(6), remove ''and'';

■ b. In paragraph (a)(7), remove the period and add in its place ''; and'';

■ c. Add paragraph (a)(8); and

■ d. Revise paragraphs (d), (e), and (f).

The addition and revisions read as follows:

§ 1000.336 How may an Indian tribe, TDHE, or HUD challenge data or appeal HUD formula determinations?

(a) * * *

(8) The undisbursed funds factor.

* * * * *

(d) An Indian tribe or TDHE that seeks to appeal data or a HUD formula determination, and has data in its possession that are acceptable to HUD, shall submit the challenge or appeal in writing with data and proper documentation to HUD. An Indian tribe or TDHE may appeal the undisbursed funds factor no later than 30 days after the receipt of the formula determination. Data used to challenge data contained in the U.S. Census must meet the requirements described in § 1000.330(a). Further, in order for a census challenge to be considered for the upcoming fiscal year allocation, documentation must be submitted by March 30th.

(e) HUD shall respond to all challenges or appeals no later than 45 days after receipt and either approve or deny the appeal in writing, setting forth the reasons for its decision.

(1) If HUD challenges the validity of the submitted data HUD and the Indian tribe or TDHE shall attempt in good faith to resolve any discrepancies so that such data may be included in the formula allocation.

(2) If HUD denies a challenge or appeal, the Indian tribe or TDHE may request reconsideration of HUD's denial within 30 calendar days of receipt of HUD's denial. The request shall be in writing and set forth justification for reconsideration.

(3) HUD shall in writing affirm or deny the Indian tribe's or TDHE's request for reconsideration, setting forth HUD's reasons for the decision, within 20 calendar days of receiving the request. HUD's denial of a request for reconsideration shall constitute final agency action.

(4) If HUD approves the Indian tribe or TDHE's appeal, HUD will adjust to the Indian tribe's or TDHE's subsequent fiscal year allocation to include only the disputed fiscal year(s).

(f) In the event HUD questions whether the data contained in the formula accurately represents the Indian tribe's need, HUD shall request the Indian tribe to submit supporting documentation to justify the data and, if applicable, to provide a commitment to serve the population indicated in the geographic area.

■ 12. Add § 1000.342 to subpart D to read as follows:

§ 1000.342 Are undisbursed IHBG funds a factor in the grant formula?

Yes, beginning fiscal year 2018. After calculating the initial allocation calculation for the current fiscal year by calculating FCAS, need, the 1996 Minimum, and repayments or additions for past over- or under-funding for each Indian tribe, the undisbursed funds factor shall be applied as follows:

(a) The undisbursed funds factor applies if an Indian tribe's initial allocation calculation is $5 million or more and the Indian tribe has undisbursed IHBG funds in an amount that is greater than the sum of the prior 3 years' initial allocation calculations.

(b) If subject to paragraph (a) of this section, the Indian tribe's grant allocation shall be the greater of the initial allocation calculation minus the amount of undisbursed IHBG funds that exceed the sum of the prior 3 years' initial allocation calculations, or its 1996 Minimum.

(c) For purposes of this section, ''undisbursed IHBG funds'' means the amount of IHBG funds allocated to an Indian tribe in HUD's line of credit control system on October 1 of the fiscal year for which the allocation is made. For Indian tribes under an umbrella TDHE (a recipient that has been designated to receive grant amounts by more than one Indian tribe), if the Indian tribe's initial allocation calculation is $5 million or more, its undisbursed IHBG funds is the amount calculated by multiplying the umbrella TDHE's total balance in HUD's line of credit control system on October 1 of the fiscal year for which the allocation is made by a percentage based on the Indian tribe's proportional share of the initial allocation calculation of all tribes under the umbrella.

(d) Amounts subtracted from an initial allocation calculation under this section shall be redistributed under the need component among all Indian tribes not subject to paragraph (a) of this section (while also retaining the 1996 Minimum).

■ 13. Revise appendices A and B of part 1000 to read as follows:

Appendix A to Part 1000—Indian Housing Block Grant Formula Mechanics

This appendix shows the different components of the Indian Housing Block Grant (IHBG) formula. The following text explains how each component of the IHBG formula is calculated.

1. The first step in running the IHBG formula is to determine the amount available for allocation in the Fiscal Year (FY). It is the sum of:

(a) The FY appropriation for the IHBG program less amounts in the Appropriations Act mandated for purposes other than the formula allocation.

(b) The net amount, if any, made available as a result of corrections for over- or under-allocations in prior FYs.

(c) The amount, if any, made available pursuant to § 1000.536.

(d) The amounts, if any, made available because tribes voluntarily returned, or did not accept, the amounts allocated to them in prior FYs, defined as ''carryover'' (see § 1000.329).

2. If there is carryover as defined in § 1000.329, the amount of carryover up to $3 million, is then held aside for allocation under the minimum total grant provisions of the formula (see 11 below).

3. The IHBG formula first calculates the amount each tribe is allocated under the Formula Current Assisted Stock (FCAS) component (See §§ 1000.310 through 1000.322). The FCAS component is comprised of two parts, Operating Subsidy (§ 1000.316(a)) and Modernization (§ 1000.316(b)).

(a) The Operating Subsidy component is calculated in two steps, as follows:

(i) Each tribe's counts of Low Rent, Homeownership (Mutual Help and Turnkey III), and Section 8 units are multiplied by the National Per Unit Subsidy for operations for that category of unit, which is a 1996 index for the type of unit that is adjusted for inflation (see § 1000.302 defining National Per Unit Subsidy). The amounts are summed to create an initial calculation of the operating subsidy component.

(ii) The initial operating subsidy component amount is then adjusted for local area costs, using an adjustment factor called the AELFMR. The AELFMR factor is calculated for each tribe in three steps. First, an Allowable Expense Level (AEL) factor is calculated by dividing the tribe's AEL, a historic per-unit measure of operating cost, by the national weighted average AEL (see § 1000.302 defining Allowable Expense Level). Second, a Fair Market Rent (FMR) factor is calculated by dividing the tribe's FMR amount, an area-specific index published annually by HUD (see § 1000.302 Fair Market Rent factor), by the national weighted average FMR. Third, an AELFMR factor is created by assigning each tribe the greater of its AEL or FMR factor, and dividing that figure by the national weighted average AELFMR. In all cases, when the national average figure is calculated, tribes are weighted by the amount of their initial operating subsidy as calculated in 3(a)(i).

(See § 1000.320).

(b) The Modernization component is determined using two methods depending on the number of public housing units that a tribe's housing authority operated prior to the Native American Housing and Self-Determination Act.

(i) For all tribes, the number of Low Rent, Mutual Help, and Turnkey III units are multiplied by the National Per Unit Subsidy for modernization from 1996 adjusted for inflation (see § 1000.302 defining National Per Unit Subsidy).

(ii) For Indian tribes with an Indian Housing Authority (IHA) that owned or operated fewer than 250 units on October 1, 1997, an alternative modernization component is calculated from the amount of funds the IHA received under the assistance program authorized by Section 14 of the 1937 Act (not including funds provided as emergency assistance) for FYs 1992 through 1997 (see § 1000.316(b)(2)). If this alternative calculation is greater than the amount calculated in paragraph (a) above, it is used to calculate the tribe's modernization component.

(iii) The Modernization component is then multiplied by a local area cost adjustment factor based on the Total Development Cost (TDC) for the tribe (see § 1000.302) divided by the national weighted average of all TDCs weighted by each tribe's pre-adjustment Modernization calculation in paragraph (b)(i) or (ii) above as applicable.

4. The total amounts calculated under the FCAS component for each tribe are then added together to determine the national total amount allocated under the FCAS component. That total is subtracted from the funds available for allocation less the carryover amount held aside for allocation under the minimum total grant provision in § 1000.329. The remainder is the total amount available for allocation under the need component of the IHBG formula.

5. The first step in calculating need component is identifying weighted needs variables and adjusting for local area cost differences.

(a) Need is first calculated using seven factors, where each factor is a tribe's share of the national totals for each of seven variables. The data used for the seven variables is described in § 1000.330. The person count variable is adjusted for statistically significant undercounts for reservations, trust lands and remote Alaska and for growth in population since the latest Decennial Census. The Population Cap provision in § 1000.302 Formula Area (5) is then applied. Needs data are capped if the American Indian and Alaska Native (AIAN) population counts exceed twice tribal enrollment unless a tribe

can demonstrate that it serves more than twice as many non-tribal members as tribal members, in which case the cap is adjusted upward.

The factors are weighted as set forth in § 1000.324, as follows:

(i) 22 percent of the amount available for allocation under the needs component are allocated by the share of the total AIAN households paying more than 50 percent of their income for housing and living in each tribe's Formula Area (see § 1000.302);

(ii) 25 percent are allocated by the share of the total AIAN households living in overcrowded housing and/or without kitchen or plumbing in each tribe's Formula Area;

(iii) 15 percent are allocated by the share of the total AIAN households with an annual income less than or equal to 80 percent of Formula Median Income (see § 1000.302) living in each tribe's Formula Area less the tribe's number of FCAS.

(iv) 13 percent are allocated by the share of AIAN households with annual income less than or equal to 30 percent of Formula Median Income living in each tribe's Formula Area;

(v) 7 percent are allocated by the share of AIAN households with annual income between 30 percent and 50 percent of Formula Median Income living in each tribe's Formula Area;

(vi) 7 percent are allocated by the share of AIAN households with annual income between 50 percent and 80 percent of Formula Median Income living in each tribe's Formula Area;

(vii) 11 percent are allocated by the share of AIAN persons living in each tribe's Formula Area.

(b) The result of these calculations for each tribe is then multiplied by a local area cost adjustment based on the Total Development Cost for the tribe (see § 1000.302) divided by the national weighted average of TDCs weighted by each tribe's pre-adjustment need calculation. (See § 1000.325).

6. Each tribe's initial need allocation amount is then adjusted under the minimum need allocation provision of § 1000.328. Tribes that are allocated less than $200,000 under the FCAS component of the IHBG formula and that certify the presence of any households at or below 80 percent of median income in their Indian Housing Plans will be allocated no less than a specified minimum under the needs component of the formula. The specified minimum amount shall equal 0.007826 percent of the appropriation for that FY after set-asides. The increase in funding for the tribes allocated the minimum need amount is funded by a reallocation from other tribes whose needs allocation exceeds the minimum need amount. This is necessary in order to keep the total allocation within the appropriation level (See § 1000.328).

7. Whenever a new Data Source is first introduced, provision is made to moderate extreme impacts through phase down adjustments. For purposes of these adjustments, new data sources (see § 1000.331) include the initial introduction of the American Community Survey and 2010 Decennial Census in 2018, and the initial introduction of the 2020 Decennial Census when it becomes available. Tribes whose allocation under the need component decrease by more than ten percent in the first year of introduction will have that decrease moderated by subsequent adjustments, as required to prevent a drop of more than ten percent per year in the tribes' needs allocation attributable solely to the introduction of the New Data Source. After allocation adjustments are made under § 1000.331 for a FY, the needs allocation of an Indian tribe whose needs allocation increased as a result of the introduction of a New Data Source under § 1000.331 shall be adjusted downward proportionate to its share of the total increase in funding resulting from the introduction of a New Data Source to keep the overall needs allocation within available appropriations.

8. A tribe's preliminary total allocation for a grant is calculated by summing the amounts calculated under the FCAS and need components. This amount is compared to how much a tribe received in FY 1996 for operating subsidy and modernization under the 1937 Housing Act. If a tribe received more in FY 1996 for operating subsidy and modernization than it does under the IHBG formula allocation, its preliminary total allocation is adjusted up to the FY 1996 amount (See § 1000.340(b)). Indian tribes receiving more under the IHBG formula than in FY 1996 have their grant allocations adjusted downward to offset the upward adjustments for the other tribes.

9. The initial allocation amount for the current FY is calculated by adding any adjustments for over- or under-funding occurring in prior FYs to the allocation calculated in the previous step. These adjustments typically result from late reporting of FCAS changes, or conveyances which occur in a timely manner following the removal of units from eligibility due to conveyance eligibility.

10. The Undisbursed Funds Factor component is calculated based on the initial allocation amounts calculated above. Tribes with an initial allocation of $5 million or more and undisbursed IHBG grant amounts (the amount available to the tribe in HUD's line of credit control on October 1 of the FY for which the allocation is being made) in an amount greater than the sum of the prior 3 years' initial allocation calculations will have their initial allocation amount adjusted down by the difference between the tribe's undisbursed grant amounts and the sum of its prior 3 years' initial allocation calculations. If this adjustment would bring the tribe below its FY 1996 minimum (see § 1000.340(b)), then the tribe will be allocated its FY 1996 minimum. The sum of the adjustments will be reallocated among the other tribes proportionally under the need component.

11. A final adjustment is made under § 1000.329 which allocates available carryover amounts up to $3 million to achieve minimum total allocations. Tribes that certify in their Indian Housing Plans the presence of any eligible households at or below 80 percent of median income and whose current FY formula allocation after the Undisbursed Funds Factor adjustment determined in the preceding step is less than 0.011547 percent of the FY appropriation after set-asides, will have their allocation adjusted upwards to 0.011547 percent of the FY appropriation after set-asides, or to a lesser percentage which can be achieved for all eligible tribes with available carryover held for this adjustment (see 2 above).

Appendix B to Part 1000—IHBG Block Grant Formula Mechanisms

1. The first step in running the Indian Housing Block Grant (IHBG) formula is to determine the total amount available for allocation in the current Fiscal Year (FY).

ALLOCAMT = APPROP + ADJ1 + ADJ2 + CARRYOVER.

Where:

ALLOCAMT = amount available for allocation under the formula.

APPROP = current FY appropriation for the IHBG program less amounts in the Appropriations Act mandated for purposes other than the formula allocation.

ADJ1= net amount, if any, made available as a result of corrections for over-or under allocations in prior FYs.

ADJ2 = amount, if any, made available under § 1000.536.

CARRYOVER = amounts, if any, made available because tribes voluntarily returned, or did not accept, the amounts allocated to them in prior FYs.

2. If there is carryover as defined in § 1000.329, the amount of carryover up to $3 million, is then held aside for allocation under the minimum total grant provisions of the formula (see Step 10), then:

MGHOLD = amount set-aside for allocation under minimum total grant provision.

If CARRYOVER = 0, MGHOLD = 0.

If CARRYOVER > 0 and CARRYOVER < = $3 million, MGHOLD = CARRYOVER.

If CARRYOVER > $3 million, MGHOLD = $3 million.

3. The FCAS component is calculated first. FCAS consists of two parts, Operating Subsidy (OPSUB) and Modernization (MOD), such that:

FCAS = OPSUB + MOD.

a. OPSUB is calculated in two steps, as follows:

(i) First, the number of Low-Rent, Section 8 and homeownership units are multiplied by the applicable national per unit subsidy (§ 1000.302 National Per Unit Subsidy). The amounts are summed to create an initial calculation of the Operating Subsidy component.

OPSUB1 = [LR * LRSUB] + [(MH + TK) * HOSUB] + [S8 * S8SUB].

Where:

OPSUB1 = initial calculation of Operating Subsidy component.

LR = number of Low-Rent units.

LRSUB = national per unit subsidy for Low-Rent units ($2,440 * INF).

INF = adjustment for inflation since 1995, as determined by the Consumer Price Index for housing.

MH + TK = number of Mutual Help and Turnkey III units.

HOSUB = national per unit subsidy for Homeownership units ($528 * INF).

S8 = number of Section 8 units.
S8SUB = national per unit subsidy for Section 8 units = ($3,625 * INF).

(ii) The initial Operating Subsidy component amount is then adjusted for local area costs, using an adjustment factor called the AELFMR. The AELFMR factor is calculated for each tribe in three steps. First, an AEL factor is calculated by dividing the tribe's Allowable Expense Level (AEL), a historic per-unit measure of operating cost, by the national weighted average AEL (see § 1000.302 defining Allowable Expense Level)

AEL FACTOR = AEL/NAEL.

Where:

AEL = local Allowable Expense Level.
NAEL = national weighted average for AEL, where the weight is a tribe's initial calculation of operating subsidy.

Second, an FMR factor is calculated by dividing the tribe's Fair Market Rent amount (FMR), an area-specific index published annually by HUD (see § 1000.302 Fair Market Rent factor), by the national weighted average FMR.

FMR FACTOR = FMR/NFMR.

Where:

FMR= local Fair Market Rent.
NFMR = national weighted average for FMR, where the weight is a tribe's initial calculation of operating subsidy.

Third, an AELFMR factor is created by assigning each tribe the greater of its AEL or FMR factor, and dividing that figure by the national weighted average AELFMR. In all cases, when the national average figure is calculated, tribes are weighted by the amount of their initial operating subsidy as calculated in 3(a)(i) above. (See § 1000.320).

AELFMRFACTOR = final local area cost adjustment factor (AELFACTOR or FMRFACTOR)/NAELFMR.

Where:

NAELFMR = national weighted average for greater of AEL Factor or FMR factor, where weight is a tribe's initial calculation of operating subsidy

Finally, the AELFMR factor is used to adjust the initial operating subsidy calculation for differences in local area costs.

OPSUB = OPSUB1 * AELFMRFACTOR.

Where:

OPSUB = Operating Subsidy component after adjustment for local cost differences.

b. The modernization component, MOD, is calculated by two different methods, depending on whether the tribe had an Indian housing authority (IHA) that owned or operated more than 250 public housing units on October 1, 1997.

(i) MOD1 is calculated for all tribes and considers the number of Low-Rent, and Mutual Help and Turnkey III FCAS units. Each of these is adjusted by the national per-unit modernization subsidy

MOD1 = [LR + MH + TK] * MODPU.

Where:

LR = number of Low-Rent units.
MH = number of Mutual Help units.
TK = number of Turnkey III units.
MODPU = national per-unit amount for modernization in 1996 adjusted for inflation ($1,974 * INF).
INF = adjustment for inflation since 1995, as determined by the Consumer Price Index for housing.

(ii) MODAVG is calculated only for tribes that had an IHA that owned or operated fewer than 250 public housing units on October 1, 1997, as the annual average amount they received for FYs 1992 through 1997 under the assistance program authorized by section 14 of the 1937 Act (not including emergency assistance). If this alternative calculation is greater than the amount calculated in (i), it is used to calculate the tribe's modernization component.

MODAVG = Average (FY 1992 to FY 1997) amount received by Section 14 of the 1937 Act.

If MODAVG > MOD1, MOD1 = MODAVG.

c. The modernization calculation is adjusted for local area costs:

MOD = MOD1 * (TDC/NTDC).

Where:

TDC = Local Total Development Costs defined in § 1000.302.
NTDC = weighted national average for TDC, where the weight is the initial calculation of modernization amount of tribe with CAS.

4. Now that calculation for FCAS is complete, the amount allocated using the need component of the formula can be determined:

NEEDALLOCAMT = ALLOCAMT − MGHOLD − NATCAS.

Where:

NEEDALLOCAMT = amount allocated using the need component of the formula.
ALLOCAMT = amount available for allocation under the formula.
MGHOLD = amount held for allocation under minimum total grant provision.
NATCAS = national summation of FCAS allocation for all tribes.

5. The first step in calculating needs is identifying weighted needs variables and adjusting for local area cost differences.

a. The basic needs calculation uses seven weighted criteria based on population and housing data in a tribe's Formula Area or share of Formula Area if Formula Areas overlap (see § 1000.302 Formula Area and § 1000.326) to allocate the funds available for the needs component. The person count variable is adjusted for statistically significant undercounts for reservations, trust lands and remote Alaska and for changes in population since the latest Decennial Census.

PERADJ = PER * UCFACTOR * POPCHGFACTOR.

Where:

PER = American Indian and Alaskan Native (AIAN) persons as reported in the most recent Decennial Census.
UCFACTOR= 1+ the percentage undercount identified by the Census by type of land (in 2010 1.0488 for reservation and trust lands only and assumed also to apply to remote Alaska).
POPCHGFACTOR = the ratio of the most recent AIAN Census population estimate for county to the AIAN count for county from the Decennial Census.

The Population Cap provision in § 1000.302 Formula Area (5) is then applied. Needs data are capped if AIAN population counts exceed twice tribal enrollment unless a tribe can demonstrate that it serves more than twice as many non-tribal members as tribal members, in which case the cap is adjusted upward.

POPCAPTEST=1 if PERADJ > TEmultiplier * TE

If POPCAPTEST=1, (tribes subject to Population Cap) then:

PER = TEmultiplier * TE
POPCAPADJF = PER/PERADJ

For tribes NOT subject to Population Cap, PER = PERADJ and POPCAPADJF = 1.

Where:

POPCAPTEST = an indicator showing whether a tribe's needs data must be adjusted downward because its Formula Area population is disproportionally large relative to tribe's enrollment,
TEmultiplier = 2, or a larger factor if justified by tribe on annual basis.
TE = Tribal enrollment.
POPCAPADJF = factor used to adjust household needs variables.

An initial calculation of the needs component is then calculated by determining each tribe's share of national totals on each variable, and applying weights to the variables as specified in regulation.

BASENEED = [(0.11 * (PER)/NPER) + (0.13 * HHLE30/NHHLE30) + (0.07 * HH30T50/NHH30T50) + (0.07 * HH50T80/NHH50T80) + (0.25 * OCRPR/NOCRPR) + (0.22 * SCBTOT/NSCBTOT) + (0.15 * HOUSHOR/NHOUSHOR)] * NEEDALLOCAMT.

Where:

PER = count of AIAN persons after adjustments.
NPER = national total of PER.
HHLE30 = count of AIAN households less than 30% of formula median income multiplied by POPCAPADJF.
NHHLE30 = national total of HHLE30.
HH30T50 = count of AIAN households 30% to 50% of formula median income multiplied by POPCAPADJF.
NHH30T50 = national total of HH30T50.
HH50T80 = count of AIAN households 50% to 80% of formula median income multiplied by POPCAPADJF.
NHH50T80 = national total of HH50T80.
OCRPR = count of AIAN households crowded or without complete kitchen or plumbing multiplied by POPCAPADJF.
NOCRPR = national total of OCRPR.
SCBTOT = count of AIAN households paying more than 50% of their income for housing multiplied by POPCAPADJF.
NSCBTOT = national total SCBTOT.
HOUSHOR = a measure of housing shortage calculated as (HHLE30 + HH30T50 + HH50T80)—(LR + MH + TKIII)
NHOUSHOR = national total of HOUSHOR.
NEEDALLOCAMT = amount allocated using the need component of the formula.

b. The basic needs calculation is adjusted to reflect differences in local area costs.

NEED = BASENEED * (TDC/NATDC).

Where:

TDC = Local Total Development Costs defined in § 1000.302.

NATDC = average for TDC for all tribes weighted using BASENEED.

6. The need allocation computed above is adjusted to take into account the minimum needs provision. Tribes allocated less than $200,000 under the FCAS component of the IHBG formula and that certify the presence of any households at or below 80 percent of median income in their Indian Housing Plan are allocated an additional amount so their needs allocation equals 0.007826 percent of the available appropriations for that FY after set-asides.

MINNEED = APPROP * 0.00007826.

Where:

APPROP = current FY appropriation for the IHBG program less amounts in the Appropriations Act mandated for purposes other than the formula allocation.

If in the first need computation, a qualified tribe is allocated less than the minimum needs funding level, its need allocation will go up. Other tribes whose needs allocations are greater than the minimum needs amount will have their allocations adjusted downward to keep the total allocation within available funds:

If NEED < MINNEED and FCAS < $200,000 and income-based need has been identified in a tribe's IHP, then NEED1 = MINNEED.

If NEED > = MINNEED, then NEED1 = NEED1 − {UNDERMIN$ * [(NEED1 − MINNEED)/OVERMIN$]}.

Where:

MINNEED = minimum needs amount.

UNDERMIN$ = for all tribes qualifying for an increase under the minimum needs provision, sum of the differences between MINNEED and NEED1.

OVERMIN$ = for all tribes with needs allocations larger than the minimum needs amount, the sum of the difference between NEED1 and MINNEED.

7. Whenever a new data source (see § 1000.331) is first introduced, provision is made to moderate extreme impacts through phase down adjustments. Tribes whose allocation under the need component decrease by more than ten percent in the first year of introduction will have that decrease moderated by subsequent adjustments, as required to prevent a drop of more than ten percent per year in the tribes' needs allocation attributable solely to the introduction of the new data source. A phase down adjustment schedule is calculated, containing adjustment amounts ($PDADJ_n$) for the first and all subsequent FYs, based on the amount allocated to a tribe under the need component in the FY prior to the introduction of the new data source using the old data source. That is,

If NEED1NewDS < 0.9 * NEED1OldDS, then a tribe qualifies for a phase down adjustment (PDADJ) (see § 1000.331(c)).

$PDADJ_n$ = (((0.9^n) * NEED1OldDS)—NEED1NewDS), where n = 1 to ∞ provided $PDADJ_n$ > 0 for at least one tribe.

Where:

NEED1NewDS = the amount the tribe would have received in the FY prior to the introduction of the new data source had the new data source been used to determine their need component in that FY.

NEED1OldDS = the amount a tribe actually received in the FY prior to the introduction of the new data source based on the old data source.

$PDADJ_n$ = the size of the adjustment that qualifying tribes will receive in each year n, where the n represents the number of years elapsed since the introduction of the new data source and is equal to one in the first year.

After allocation adjustments are made under § 1000.331 for a FY, the needs allocation of an Indian tribe whose needs allocation increased as a result of the introduction of a new data source shall be adjusted downward proportionate to its share of the total increase in funding resulting from the introduction of a new data source to keep the overall need component within available appropriations. For each tribe which benefitted from the introduction of the new data source, their share of the total gain is calculated and that share is used to determine the amount of contribution they will make in each year following the introduction of the new data source to allow the phase down adjustments to be made without exceeding the amount available for allocation.

If NEED1NewDS > NEED1OldDS, then tribe gained from the introduction of the new data source and contributes a portion of their gain to offset the phase down adjustments.

GAINSHR = (NEED1NewDS –NEED1OldDS)/TOTGAINYR1.

$CONTRIB_n$ = GAINSHR * $TOTPDADJ_n$,

Where:

NEEDd1NewDS = the amount the tribe would have received in the FY prior to the of introduction of the new data source had the new data source been used to determine their needs funding in that FY.

NEED1OldDS = the amount a tribe actually received in the FY prior to the introduction the new data source based on the old data source.

GAINSHR = a tribe's share of the total gains realized by all tribes that benefitted from the introduction of the new data source.

TOTGAINYR1 = the sum of the amounts that tribes gain from the introduction of the new data source in year one.

$CONTRIB_n$ = the size of the contribution that non-qualifying tribes give in each year n, where the n represents the number of years elapsed since the introduction of the new data source and equal to one in the first year.

$TOTPDADJ_n$ = the total amount in each year n required to cover the cost of phase down adjustments in that year, *i.e.* Σ $PDADJ_n$.

The initial needs allocation for each tribe is adjusted based on the phase down adjustments and contribution amounts in the phase down schedule.

NEED1PD = NEED1 +_$PDADJ_n$ − $CONTRIB_n$.

Where:

NEED1PD = a tribe's allocation under the need component after applying the phase down adjustment schedule.

NEED1= the initial calculation of need in the current FY from step 6 above.

$PDADJ_n$ = the size of the adjustment that qualifying tribes will receive in each year n, where the n represents the number of years elapsed since the introduction of the new data source and is equal to one in the first year.

$CONTRIB_n$ = the size of the contribution that non-qualifying tribes give in each year n, where the n represents the number of years elapsed since the introduction of the new data source and equal to one in the first year.

$PDADJ_n$ and $CONTRIB_n$ as calculated in the initial phase down adjustment schedule may have to be adjusted downward in subsequent FYs if the total amount available for allocation under the needs Component (*i.e.* NEEDALLOCAMT in Step 4) is lower than the amount available for that purpose in the FY prior to the introduction of the new data source. If so, both $PDADJ_n$ and $CONTRIB_n$ will be reduced by a factor which is the ratio of NEEDALLOCAMT in current FY to NEEDALLOCAMT in the year prior to the introduction of the new data source.

Furthermore, when the 2020 Decennial Census or other new data source is introduced, a new phase down adjustment schedule will be calculated in a similar manner as that was calculated for FY 2018.

8. A tribe's preliminary total allocation is calculated by summing the amounts calculated under the FCAS and need components that will serve as the basis for further adjustments in accordance with § 1000.340.

GRANT1 = FCAS + NEED1PD.

Where:

GRANT1 = preliminary total allocation before applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8), Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

FCAS = Formula Current Assisted Stock component equal to OPSUB + MOD.

NEED1PD = the Tribe's needs allocation after applying the phase down adjustment schedule.

GRANT1 is compared to how much a tribe received in FY 1996 for operating subsidy and modernization under the 1937 Housing Act. If a tribe received more in FY 1996 for operating subsidy and modernization than its IHBG formula allocation, its preliminary total allocation is adjusted up to the FY 1996 amount (See § 1000.340(b)). Indian tribes receiving more under the IHBG formula than in FY 1996 have their grant allocations adjusted downward to offset the upward adjustment for the other tribes.

TEST = GRANT1 − OPMOD96.

If TEST is < = than 0, then GRANT2 = OPMOD96.

If TEST is greater than 0 and GRANT1 > MINNEED, then:

GRANT2 = GRANT1 − [UNDER1996 * (TEST/OVER1996)].

Where:

TEST = variable to decide whether tribes qualify for adjustments under 1996 minimum funding.

GRANT1 = preliminary total allocation before applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8), Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

OPMOD96 = funding received by tribe in FY 1996 for Operating Subsidy and Modernization.

MINNEED = minimum needs amount.

UNDER1996 = for all tribes with TEST less than 0, sum of the absolute value of TEST.

OVER1996 = for all tribes with TEST greater than 0, sum of TEST.

GRANT2 = preliminary total allocation after applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8) but before applying the Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

9. The initial allocation amount for the current FY is calculated by adding any adjustments for over- or under-funding occurring in prior FYs to the allocation calculated in the previous step. These adjustments typically result from late reporting of FCAS changes, or conveyances.

REPGRANT = GRANT2 + ADJUST1.

Where:

REPGRANT = Initial Allocation Amount in current FY (see § 1000.342).

GRANT2 = preliminary total allocation after applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8) but before applying the Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

ADJUST1 = adjustments for over- or under-funding occurring in prior FYs.

10. The Undisbursed Funds Factor is determined by subtracting the sum of each tribe's Initial Allocation Amount for the prior three FYs from the IHBG amounts in HUD's Line of Credit Control System (LOCCS) on October 1 of the FY for which the new allocation is being determined. If the undisbursed funds factor is > $0 and the tribe's initial allocation for the FY exceeds $5 million, its final allocation will be the initial allocation minus the Undisbursed Funds Factor or its 1996 minimum, whichever is greater. Reductions to the initial allocation amounts due to the Undisbursed Funds Factor are summed and redistributed to other tribes in proportion to their initial needs allocation, NEED1PD, calculated above.

If REPGRANT > = $5 MILLION and UNDISB$ > (REPGRANTYR1 + REPGRANTYR2 + REPGRANTYR3), then UDFFtest = 1.

Where:

REPGRANT = Initial Allocation Amount in current FY.

REPGRANTYR1 = Initial Allocation Amount in one year prior to current FY.

REPGRANTYR2 = Initial Allocation Amount in two years prior to current FY.

REPGRANTYR3 = Initial Allocation Amount in three years prior to current FY.

UDFFTest = is an indicator as to whether the tribe will give up a portion of its needs allocation due to an excessive amount of undisbursed funds.

For tribes whose UDFFtest = 1, a reduction will occur as follows:

REPGRANTaftUDFF = (GRANT2 − (UNDISB$ − (REPGRANTYR1 + REPGRANTYR2 + REPGRANTYR3))

Except if, OPMOD96 > (GRANT2 − (UNDISB$ − (REPGRANTYR + REPGRANTYR2 + REPGRANTYR3)) then, REPGRANTaftUDFF = OPMOD96.

Where:

REPGRANTaftUDFF = Initial Allocation Amount in current FY adjusted for the Undisbursed Funds Factor.

GRANT2 = preliminary total allocation after applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8) but before applying the Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

UNDISB$ = amount in HUD's LOCCS on October 1 of the FY.

REPGRANTYR1 = Initial Allocation Amount in one year prior to current FY.

REPGRANTYR2 = Initial Allocation Amount in two years prior to current FY.

REPGRANTYR3 = Initial Allocation Amount in three years prior to current FY.

OPMOD96 = funding received by tribe in FY 1996 for Operating Subsidy and Modernization.

So the UDFFadj = REPGRANTaftUDFF − GRANT2 and UDFFadjTOT= Absolute value of the sum of UDFF adjustments for tribes subject to reduction.

If UDFFtest is not equal to 1, tribes receive a portion of the funds recovered under the UDFF provision based on their share of total needs excluding any tribes with UDFFtest = 1. For these tribes, then:

UDFFadj = (NEED1PD/Σ Need1PD) * UDFFadjTOT).

REPGRANTaftUDFF = REPGRANT + UDFFadj.

Where:

UDFFadj = amount of the Undisbursed Fund Factor adjustments. Negative amount represents excess undisbursed funds. Positive represents amounts being transferred to other tribes without excess undisbursed funds.

NEED1PD = the Tribe's needs allocation after applying the phase down adjustment schedule.

UDFFadjTOT = absolute value of the sum of Undisbursed Fund Factor adjustments for tribes that meet the criteria for reduction and is equal to the sum available for redistribution among other tribes based on their initial needs allocation.

REPGRANTaftUDFF = Initial Allocation Amount in current FY adjusted for the Undisbursed Funds Factor.

REPGRANT = Initial Allocation Amount in current FY.

11. A final adjustment is made under § 1000.329 which allocates available carryover amounts up to $3 million to achieve minimum total allocations. Tribes that certify in their Indian Housing Plans the presence of any eligible households at or below 80 percent of median income and whose total allocation determined in the preceding step is less than 0.011547 percent of the FY appropriation after set-asides, will have their allocation adjusted upwards to 0.011547 percent of the FY appropriation after set-asides, or to a lesser percentage which can be achieved for all eligible tribes with available carryover funds set-aside for this purpose.

MINGRANT = APPROP * 0.0001547.

Where:

APPROP = current FY appropriation for the IHBG program less amounts in the Appropriations Act mandated for purposes other than the formula allocation.

If (GRANT2 + UDFFADJ) < MINGRANT and income-based need has been identified in a tribe's IHP, then tribe qualifies for MINGRANTADJ. For Tribes that qualify, calculate:

MINGRTADJTEST = MINGRANT—(GRANT2 + UDFFADJ).

If the Sum for all tribes of MINGRTADJTEST < MGHOLD, then:

MINGRANTADJ = MINGRTADJTEST.

If the Sum for all tribes of MINGRANTADJTEST > MGHOLD, then:

MINGRANTADJ = MINGRANTADJTEST * (MGHOLD/Σ MINGRANTADJ)

Where:

GRANT2 is the approximate grant allocation in any given year for any given tribe.

UDFFADJ = amount of UDFF adjustment.

MINGRANT = Minimum total allocation established in § 1000.329.

MINGRANTADJTEST = amount required to bring all qualifying tribes' allocations up to the minimum total allocation amount. This amount can then be compared.

MGHOLD = amount set-aside for allocation under minimum total grant provision (see Step 2).

MINGRANTADJ = actual amount of the minimum grant adjustment that can be accommodated with the amount set aside from carryover for this purpose.

12. A tribe's final allocation consists of the initial current FY formula allocation with three adjustments.

FINALALLOCATION = GRANT2 + ADJUST1 + UDFFadj + MINGRANTADJ

Where:

FINALALLOCATION = total amount a tribe is eligible to receive as a grant in the current FY.

GRANT2 = preliminary total allocation after applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8) but before applying the Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

ADJUST1 = adjustments for over- or under-funding occurring in prior FYs.

UDFFadj = amount of the Undisbursed Fund Factor adjustments. Negative amount represents excess undisbursed funds.

Positive represents amounts being transferred to other tribes without excess undisbursed funds.

MINGRANTADJ = actual amount of the minimum grant adjustment that can be accommodated with the amount set aside from carryover for this purpose.

Dated: November 4, 2016.

Lourdes Castro Ramirez,

Principal Deputy Assistant, Secretary for Public and Indian Housing.

Nani A. Coloretti,

Deputy Secretary.

[FR Doc. 2016–27208 Filed 11–21–16; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 842

[Docket ID: USAF–2015–0003]

RIN 0701–AA79

Administrative Claims

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: This rule contains amendments for policy changes and clarification and deletions for the Air Force guidance on Administrative claims and Personnel and Carrier Recovery Claims. The rule relates to the Air Force processes for claims filed for and against the Air Force as well as Air Force processes for filing personnel and carrier recovery claims.

DATES: This rule is effective on December 22, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Lemieux (AFLOA/JACC), 1500 West Perimeter Rd, Ste 1700, Joint Base Andrews, MD 20762, (240) 612–4646, *daniel.g.lemieux.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: On March 30, 2016 (81 FR 17621–17635), the Department of the Air Force published a proposed rule titled ''Administrative Claims'' for a 60-day public comment period. At the end of the public comment period, no public comments were received. As a result, no changes were made to the regulatory text.

Executive Summary

I. Purpose of This Regulatory Action

The purpose of this rule is to provide the public with information necessary to file a claim against the United States Air Force for money damages and to notify the public of the procedures used to collect money from the public for damages to property under the control of the United States Air Force. Additionally, it is to provide the public with information about changes and deletions concerning the settlement and payment of claims under the Military Personnel and Civilian Employee's Claims Act for incident to service loss and damage to personal property.

II. Summary of the Major Provisions of This Regulatory Action

This part describes the process and procedures by which claims against the Air Force will be addressed, including who are proper claimants, how, where and when to file a claim, what claims are payable, how the Air Force will adjudicate claims and how to appeal unfavorable decisions. It also describes the process the Air Force will use for asserting claims against persons who damage Air Force property.

Changes: This part has been substantially revised since last codified and should be reviewed in its entirety to determine the changes made.

Deletions: This part has been substantially revised since last codified and should be reviewed in its entirety to determine the deletions made.

III. Costs and Benefits

The regulations contained herein require the public who wish to file a claim against the Air Force to substantiate their loss, which may result in minor or incidental costs to the claimant. Revised regulations pertaining to how the Air Force asserts claims for damage to Air Force property may result in increased costs to those who cause said damage. The benefits of these regulations include increased safeguards to ensure public funds are not expended for fraudulent claims and to ensure the U.S. government receives adequate compensation for damages to its property wrongfully caused by others.

Retrospective Review

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, ''Improving Regulation and Regulatory Review,'' DoD's full plan and updates can be accessed at: *http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036.*

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

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. The Department of Air Force has assessed this rule and determined this rule to be a ''non-significant regulatory action.''

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 842

Administrative claims.

Accordingly, 32 CFR part 842 is amended as follows:

PART 842—[AMENDED]

■ 1. The authority citation for 32 CFR part 842 continues to read as follows:

Authority: Sec. 8013, 100 Stat. 1053, as amended; 10 U.S.C. 8013, except as otherwise noted; 28 CFR 14.11, except as otherwise noted.

■ 2. The Note for part 842 is revised to read as follows:

Note: Air Force Regulations are available on the e-Publishing Web site at *http://www.e-publishing.af.mil/* for downloading. This part is derived from Air Force Instruction 51–501, *Tort Claims,* and Air Force Instruction 51–502, *Personnel and Carrier Recovery Claims.*

■ 3. Amend part 842 by revising all references to ''HQ USAF/JACC'' to read ''AFLOA/JACC.''

■ 4. Revise § 842.0 to read as follows:

§ 842.0 Scope.

This part establishes standard policies and procedures for all administrative claims resulting from Air Force activities and for which the Air Force has assigned responsibility.

■ 5. Amend § 842.2 by:

■ a. Revising paragraph (f).

■ b. Removing paragraph (g).

■ c. Redesignating paragraphs (h) through (o) as (g) through (n).

■ d. Revising newly redesignated paragraph (g).

The revisions read as follows:

§ 842.2 Definitions.

* * * * *

(f) *AFLOA/JACC.* Claims and Tort Litigation Division, 1500 West Perimeter Road, Suite 1700, Joint Base Andrews, MD 20762.

(g) *Owner.* A holder of a legal title or an equitable interest in certain property. Specific examples include:

(1) *For real property.* The mortgagor, and the mortgagee if that individual can maintain a cause of action in the local courts involving a tort to that specific property.

(2) *For personal property.* A bailee, lessee, mortgagee and a conditional vendee. A mortgagor, conditional vendor, title loan company or someone else other than the owner, who has the title for purposes of security are not owners.

* * * * *

■ 6. Revise § 842.4 to read as follows:

§ 842.4 Where to file a claim.

File a claim at the base legal office of the unit or installation at or nearest to where the accident or incident occurred. If the accident or incident occurred in a foreign country where no Air Force unit is located, file the claim with the Defense Attache (DATT) or Military Assistance Advisory Group (MAAG) personnel authorized to receive claims (DIAM 100–1 and AFR 400–45). In a foreign country where a claimant is unable to obtain adequate assistance in filing a claim, the claimant may contact the nearest Air Force SJA. The SJA then advises AFLOA/JACC through claims channels of action taken and states why the DATT or MAAG was unable to adequately assist the claimant.

§ 842.9 [Removed]

■ 7. Remove § 842.9.

Subpart B—[Removed]

■ 8. Remove subpart B, consisting of §§ 842.10 through 842.14.

Subpart C—[Redesignated as Subpart B]

■ 9. Redesignate subpart C, consisting of §§ 842.15 through 842.20, as subpart B, consisting of §§ 842.9 through 842.14, respectively.

■ 10. Amend newly redesignated § 842.10 by revising paragraphs (a), (b), and (d) to read as follows:

§ 842.10 Definitions.

(a) *Appointing commander.* The commander exercising special court-martial jurisdiction over the offender.

(b) *Board of officers.* One to three commissioned officers appointed to investigate a complaint of willful property damage or wrongful taking by Air Force personnel.

* * * * *

(d) *Willful damage.* Damage or destruction caused intentionally, knowingly, and purposely, without justifiable excuse.

* * * * *

■ 11. Amend newly redesignated § 842.12 by adding paragraphs (g) through (i) to read as follows:

§ 842.12 Claims not payable.

* * * * *

(g) Claims involving wrongful taking stemming from larceny, forgery or deceit, which are not accompanied by riotous or violent action.

(h) Claims against Air National Guard members unless they are performing duty under Title 10 U.S.C.

(i) Claims for indirect, consequential or remote damages.

■ 12. Revise newly redesignated § 842.13 to read as follows:

§ 842.13 Limiting provisions.

(a) A complaint must be submitted within 90 days of the date of the incident. The appointing commander may find good cause for the delay and accept a late claim. The appointing commander's determination of good cause is final and not reviewable.

(b) Assessment of damages in excess of $5,000 against an offender's pay for a single incident requires AFLOA/JACC approval.

■ 13. Revise newly redesignated § 842.14 to read as follows:

§ 842.14 Filing a claim.

Claimant complains (orally or in writing) to the commander of a military organization or unit of the alleged offending member or members or to the commander of the nearest military installation. If the claim is made orally, the individual must assist the commander to reduce the complaint to writing within a reasonable time. The complainant need not request a sum certain in writing at the time the complaint is filed, but they must present such value and evidence before settlement is made.

Subpart D—[Redesignated as Subpart C]

■ 14. Redesignate subpart D, consisting of §§ 842.21 through 842.35, as subpart C, consisting of §§ 842.15 through 842.29.

§ 842.16 [Amended]

■ 15. Amend newly redesignated § 842.16 by:

■ a. Removing paragraphs (a), (c), (e), and (g).

■ b. Redesignating paragraphs (b), (d), (f), and (h) as paragraphs (a), (b), (c), and (d).

■ 16. Revise newly designated § 842.17 to read as follows:

§ 842.17 Delegations of authority.

(a) *Settlement authority.* The Secretary of the Air Force has delegated the authority to assign areas of responsibility and designate functional responsibility for claims under the Military Personnel and Civilian Employees' Claims Act to The Judge Advocate General (TJAG).

(b) *Reconsideration authority.* A settlement authority has the same authority specified in paragraph (a) of this section. However, with the exception of TJAG, a settlement authority may not deny a claim on reconsideration that it, or its delegate, had previously denied.

(c) *Authority to reduce, withdraw and restore delegated settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

■ 17. Amend newly designated § 842.18 by revising paragraph (a) to read as follows:

§ 842.18 Filing a claim.

(a) *How and when to file a claim.* A claim is filed when a federal military

agency receives from a claimant or duly authorized agent a properly completed AF Form 180, DD Form 1842 or other written and signed demand for a determinable sum of money.

(1) A claim is also filed when a federal military agency receives from a claimant or duly authorized agent an electronic submission, through a Department of Defense claims Web site, indicating that the claimant intends for the appropriate military branch to consider a digitally signed demand for a determinable sum of money.

(2) A claim is also filed when the Air Force receives from a claimant or duly authorized agent an electronic submission, through the Air Force claims Web site, a digitally signed demand for a determinable sum of money.

* * * * *

■ 18. Revise newly designated § 842.19 introductory text to read as follows:

§ 842.19 Partial payments.

Upon request of a claimant, a settlement authority may make a partial payment in advance of final settlement when a claimant experiences personal hardship due to extensive property damage or loss. Partial payments are made if a claim for only part of the loss is submitted and is readily provable, up to the amount of the settlement authority. (The claimant may later amend the claim for the remainder of the loss.) If the total payable amount of the claim exceeds the payment limits of the settlement authority, send it with recommendations to the proper settlement authority.

* * * * *

■ 19. Revise newly designated § 842.21 to read as follows:

§ 842.21 Who may file a claim.

A claim may be filed by:

(a) A proper claimant.

(b) An authorized agent or legal representative of a proper claimant.

(c) A survivor of a deceased proper claimant in this order:

(1) Spouse.

(2) Children.

(3) Father or mother.

(4) Brothers or sisters.

■ 20. Amend newly designated § 842.24 by revising paragraph (d) to read as follows:

§ 842.24 General provisions.

* * * * *

(d) Property that is owned by the claimants, or their immediate families, or borrowed for their use, or in which the claimants or their immediate families has an enforceable ownership interest.

* * * * *

■ 21. Amend newly designated § 842.25 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 842.25 Claims payable.

Claims may be payable for loss of or damage to tangible personal property when the damage occurs incident to service. For loss of or damage to property to be incident to service, it must occur at a place and time that is connected to the service of an active duty military member or employment of a civilian employee.

(a) *Authorized location.* Claims are only payable when the claimed property is located in an authorized location. There must be some connection between the claimant's service and the location of the claimed property. Duty locations where personal property is used, stored or held because of official duties are authorized places. Other authorized places may include:

(1) Any location on a military installation not otherwise excluded.

(2) Any office, building, recreation area, or real estate the Air Force or any other DoD element uses or controls.

(3) Any place a military member is required or ordered to be pursuant to their duties and while performing those duties.

(4) Assigned Government housing or quarters in the United States or provided in kind. The Military Personnel and Civilian Employees' Claims Act specifically prohibits payment for loss of or damage to property in quarters within the US unless the housing or quarters are assigned or otherwise provided in kind. Base housing that has not been privatized is generally considered assigned or provided in kind wherever it is located.

(i) Privatized housing or quarters within the United States subject to the Military Housing Privatization Initiative located within the fence line of a military installation or on federal land in which the DoD has an interest is considered assigned or otherwise provided in kind for the purposes of the Military Personnel and Civilian Employees' Claims Act.

(ii) [Reserved]

(5) Housing or quarters outside the United States. Outside the US, authorized off-base quarters, as well as assigned quarters, including quarters in US territories and possessions, are authorized places. The residence of a civilian employee is not an authorized location if the employee is a local inhabitant.

(6) Temporary duty (TDY) quarters and locations en route to the TDY destination. Significant deviations from the direct travel route are not authorized locations.

(7) Permanent change of station (PCS) temporary quarters and locations enroute to the PCS destination. Significant deviations from the direct travel route are not authorized locations.

(8) Entitlement and benefit locations. For these locations to be authorized, the claimant must be using them for the intended purpose and the property must be reasonably linked to that purpose.

(9) Locations where personal property shipped or stored at government expense are found. Government facilities where property is stored at the claimant's expense or for their convenience without an entitlement are not authorized places.

(b) *Payable causes of loss incident to service.* Because the Personnel Claims Act (PCA) is not a substitute for private insurance, loss or damage at quarters or other authorized locations may only be paid if caused by:

(1) An unusual occurrence;

(2) Theft, vandalism or other malfeasance;

(3) Hostile action;

(4) A carrier, contractor, warehouseman or other transportation service provider storing or moving goods or privately owned vehicles at government expense;

(5) An agent of the US; or

(6) A permanent seizure of a witness' property by the Air Force.

* * * * *

■ 22. Amend newly designated § 842.26 by:

■ a. Revising paragraphs (d), (j), (m), (n), (u), (y), and (z).

■ b. Remove paragraphs (aa), (bb), (cc), and (dd).

The revisions read as follows:

§ 842.26 Claims not payable.

* * * * *

(d) The loss is recovered or recoverable from an insurer or other source unless the settlement authority determines there is good cause for not claiming against the insurer.

* * * * *

(j) It is an appraisal fee, unless the settlement authority requires one to adjudicate the claim.

* * * * *

(m) It is an item acquired, possessed, shipped, or stored in violation of any US Armed Force directive or regulation.

(n) It is an item fraudulently claimed.

* * * * *

(u) It is an inconvenience expense.

* * * * *

(y) It is damage to, or loss of a rental vehicle which TDY or PCS orders authorized.

(z) It is a cost to relocate a telephone or mobile or manufactured home due to a government ordered quarters move.

Subpart E—[Removed]

■ 23. Remove subpart E.

Subpart F—[Redesignated as Subpart D]

■ 24. Redesignate subpart F, consisting of §§ 842.40 through 842.54, as subpart D consisting of §§ 842.30 through 842.44.

■ 25. Revise newly redesignated § 842.30 to read as follows:

§ 842.30 Scope of this subpart.

This subpart establishes policies and procedures for all administrative claims under the Military Claims Act for which the Air Force has assigned responsibility.

■ 26. Amend newly redesignated § 842.31 by revising paragraph (b) to read as follows:

§ 842.31 Definitions.

* * * * *

(b) *Final denial.* A letter mailed from the settlement authority to the claimant or authorized agent advising the claimant that the Air Force denies the claim. Final denial letters mailed from within the United States shall be sent by US Mail, certified mail, return receipt requested.

* * * * *

■ 27. Amend newly redesignated § 842.32 by:

■ a. Revising paragraphs (a)(1) introductory text, (a)(3) introductory text, (a)(3)(ii) and (iii), (a)(4) and (5), (b), and (f) introductory text.

■ b. Removing paragraph (f)(8) and redesignating paragraphs (f)(9) through (11) as paragraphs (f)(8) through (10).

The revisions read as follows:

§ 842.32 Delegations of authority.

(a) *Settlement authority.* (1) The Secretary of the Air Force has authority to:

* * * * *

(3) The following individuals have delegated authority to settle claims for $25,000 or less and to deny claims in any amount:

* * * * *

(ii) The Director, Civil Law and Litigation.

(iii) The Chief, Associate Chief and Branch Chiefs, Claims and Tort Litigation Division.

(4) SJAs of the Air Force component commander of the US geographic combatant commands for claims arising within their respective combatant command areas of responsibility have delegated authority to settle claims payable or deny claims filed for $25,000 or less.

(5) SJAs of GCMs in PACAF and USAFE have delegated authority to settle claims payable, or deny claims filed for $15,000 or less.

(b) *Redelegation of authority.* The Chief, Claims and Tort Litigation Division may redelegate his or her authority to Staff Judge Advocates. A settlement authority may redelegate his or her authority for claims not exceeding $25,000, to a subordinate judge advocate or civilian attorney in writing. The Chief, AFLOA/JACC may redelegate up to $25,000, in writing, to paralegals assigned to AFLOA/JACC and, upon request, may authorize installation Staff Judge Advocates to redelegate their settlement authority to paralegals under their supervision.

* * * * *

(f) *Special exceptions.* Do not settle or deny claims for the following reasons without AFLOA/JACC approval:

* * * * *

■ 28. Amend newly redesignated § 842.33 by revising paragraph (a) to read as follows:

§ 842.33 Filing a claim.

(a) *Elements of a proper claim.* A claim is must be filed on a Standard Form 95 or other written document. It must be signed by the Claimant or authorized agent, be for money damages in a sum certain, and lay out a basic statement as to the nature of the claim that will allow the Air Force to investigate the allegations contained therein.

* * * * *

■ 29. Revise newly redesignated § 842.34 to read as follows:

§ 842.34 Advance payments.

Subpart P of this part sets forth procedures for advance payments.

■ 30. Amend newly redesignated § 842.35 by revising paragraphs (a) and (c) to read as follows:

§ 842.35 Statute of limitations.

(a) A claim must be filed in writing within 2 years after it accrues. It is deemed to be filed upon receipt by The Judge Advocate General, AFLOA/JACC, or a Staff Judge Advocate of the Air Force. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss. The same rules governing accrual pursuant to the Federal Tort Claims Act should be applied with respect to the Military Claims Act. Upon receipt of a claim that properly belongs with another military department, the claim is promptly transferred to that department.

* * * * *

(c) A claim filed after the statute of limitations has run is considered if the US is at war or in an armed conflict when the claim accrues or if the US enters a war or armed conflict after the claim accrues, and if good causes shows how the war or armed conflict prevented the claimant from diligently filing the claim within the statute of limitations. But in no case will a claim be considered if filed more than two years after the war or armed conflict ends.

■ 31. Revise newly redesignated § 842.37 to read as follows:

§ 842.37 Who are proper claimants.

(a) Citizens and inhabitants of the United States. US inhabitants includes dependents of the US military personnel and federal civilian employees temporarily outside the US for purposes of US Government service.

(b) US military personnel and civilian employees. Note: These personnel are not proper claimants for claims for personal injury or death that occurred incident to their service.

(c) Foreign military personnel when the damage or injury occurs in the US. Do not pay for claims under the Military Claims Act (MCA) for personal injury or death of a foreign military personnel that occurred incident to their service.

(d) States, state agencies, counties, or municipalities, or their political subdivisions.

(e) Subrogees of proper claimants to the extent they have paid for the claim in question.

■ 32. Revise newly redesignated § 842.38 to read as follows:

§ 842.38 Who are not proper claimants.

(a) Governments of foreign nations, their agencies, political subdivisions, or municipalities.

(b) Agencies and nonappropriated fund instrumentalities (NAFIs) of the US Government.

(c) Subrogees of § 842.42(a) and (b).

(d) Inhabitants of foreign countries.

■ 33. Amend newly redesignated § 842.39 by:

■ a. Revising paragraph (a).

■ b. Removing paragraphs (c), (d), and (f).

■ c. Redesignating paragraph (e) as paragraph (c).

The revision reads as follows:

§ 842.39 Claims payable.

(a) Claims arising from negligent or wrongful acts or omissions committed by United States military or civilian personnel while acting in the scope of their employment, subject to the exceptions listed in this subpart.

* * * * *

■ 34. Revise newly redesignated § 842.40 to read as follows:

§ 842.40 Claims not payable.

(a) Claims covered by the Federal Tort Claims Act (FTCA), Foreign Claims Act (FCA), International Agreements Claims Act (IACA), 10 U.S.C. 2734a and 2734b, Air Force Admiralty Claims Act (AFACA), 10 U.S.C. 9801–9804, 9806, National Guard Claims Act (NGCA), 32 U.S.C. 715, or covered under the Military Personnel and Civilian Employees' Claims Act (MPCECA), 31 U.S.C. 3701, 3721.

(1) MCA claims arising from noncombat activities in the US are not covered by the FTCA because more elements are needed to state an FTCA claim than are needed to state a claim under the MCA for noncombat activities. All FTCA claims are based on elements of traditional tort liability (*i.e.,* duty, breach, causation, and damages); that is, they are fault based. Noncombat activity claims under the MCA are based solely on causation and damages. Because MCA claims for noncombat activities are not fault based, they are not covered by the FTCA.

(2) Claims for incident-to-service damage to vehicles caused by the negligence of a member or employee of the armed forces acting in the scope of employment are paid under the MCA, instead of the Military Personnel and Civilian Employees' Claims Act.

(b) Arises with respect to the assessment or collection of any customs duty, or the detention of any goods or merchandise by any US officer of customs or excise, or any other US law enforcement officer. Note: This includes loss or damage to property detained by members of the Security Forces or Office of Special Investigation (OSI).

(c) Is cognizable under US admiralty and maritime law, to include:

(1) The Suits in Admiralty Act, 46 U.S.C. 30901 and following.

(2) The Death on the High Seas Act, 46 U.S.C. 30301 and following.

(3) The Public Vessels Act, 46 U.S.C. 31101 and following.

(4) Exception: Claims arising from noncombat activities may be paid under the MCA, even if they are also cognizable under paragraphs (c)(1) through (3) of this section.

(d) Arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, or abuse of process. Exception: Unless such actions were committed by an investigative or law enforcement officer of the US who is empowered by law to conduct searches, seize evidence, or make arrests for violations of federal law.

(e) Arises out of libel, slander, misrepresentation, or deceit.

(f) Arises out of an interference with contract rights.

(g) Arises out of the combat activities of US military forces.

(h) Is for the personal injury or death of a member of the Armed Forces of the US incident to the member's service.

(i) Is for the personal injury or death of any person for workplace injuries covered by the Federal Employees' Compensation Act, 5 U.S.C. 8101, and following.

(j) Is for the personal injury or death of any employee of the US, including nonappropriated fund employees, for workplace injuries covered by the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, and following.

(k) Is for a taking of property, *e.g.,* by technical trespass or over flight of aircraft.

(l) Is for patent or copyright infringement.

(m) Results wholly from the negligent or wrongful act of the claimant.

(n) Is for the reimbursement of medical, hospital, or burial expenses furnished at the expense of the US, either directly or through contractual payments.

(o) Arises from contractual transactions, express or implied (including rental agreements, sales agreements, leases, and easements), that:

(1) Are payable or enforceable under oral or written contracts; or

(2) Arise out of an irregular procurement or implied contract.

(p) Is for the personal injury or death of military or civilian personnel of a foreign government incident to their service.

(q) Is based on an act or omission of an employee of the government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. Do not deny claims solely on this exception without the prior approval of USAF/JACC. Claims under the noncombat activities provision of this subpart may be paid even if this paragraph (q) applies. Is based on the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty on the part of a federal agency or a Federal Government employee, whether or not the discretion involved is abused. Do not deny claims solely on this exception without the prior approval of USAF/JACC. Exception: Claims under the noncombat activities provision may be paid even if this paragraph (q) applies.

(r) Is not in the best interests of the US, is contrary to public policy, or is otherwise contrary to the basic intent of the MCA. Examples include, but are not limited to, when a claimant's criminal conduct or failure to comply with a nonpunitive regulation is a proximate cause of the loss. Prior approval must be obtained from USAF/JACC before denying claims solely on this exception.

(s) Arises out of an act or omission of any employee of the government in administering the provisions of the Trading With the Enemy Act, 50 U.S.C. app. 1–44.

(t) Is for damages caused by the imposition or establishment of a quarantine by the US.

(u) Arises from the fiscal operations of the Department of the Treasury or from the regulation of the monetary system.

(v) Arises from the activities of the Tennessee Valley Authority.

(w) Arises from the activities of a federal land bank, a federal intermediate credit bank, or a bank for cooperatives.

(x) Is for the personal injury or death of any government contractor employee for whom benefits are available under any worker's compensation law, or under any contract or agreement providing employee benefits through insurance, local law, or custom when the US pays insurance either directly or as part of the consideration under the contract. Only USAF/JACC may act on these claims.

(y) Is for damage, injury or death from or by flood or flood waters at any place.

(z) Is for damage to property or other losses of a state, commonwealth, territory, or the District of Columbia caused by Air National Guard personnel engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505 who are assigned to a unit maintained by that state, commonwealth, territory, or the District of Columbia.

(aa) Is for damage to property or for any death or personal injury arising out of activities of any federal agency or employee of the government in carrying out the provisions of the Disaster Relief Act of 1974 (42 U.S.C. 5121, *et seq.*), as amended.

(bb) Arises from activities that present a political question.

(cc) Arises from private, as distinguished from government, transactions.

(dd) Is based solely on compassionate grounds.

(ee) Is for rent, damage, or other expenses or payments involving the

regular acquisition, use, possession, or disposition of real property or interests therein by and for the US.

(ff) Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the US., or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is, and at the time of the incident was, friendly to the US. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage, loss, or destruction of personal property in the custody of the US otherwise payable. Forward claims considered not payable under this paragraph (ff), with recommendations for disposition, to USAF/JACC.

(gg) Arises out of the loss, miscarriage, or negligent transmission of letters or postal matter by the US Postal Service or its agents or employees.

(hh) Is for damage to or loss of bailed property when the bailor specifically assumes such risk.

(ii) Is for property damage, personal injury, or death occurring in a foreign country to an inhabitant of a foreign country.

(jj) Is for interest incurred prior to the payment of a claim.

(kk) Arises out of matters which are in litigation against the US.

(ll) Is for attorney fees or costs in connection with pursuing an administrative or judicial remedy against the US or any of its agencies.

(mm) Is for bail, interest or inconvenience expenses incurred in connection with the preparation and presentation of the claim.

(nn) Is for a failure to use a duty of care to keep premises owned or under the control of the US safe for use for any recreational purpose, or for a failure by the US to give any warning of hazardous conditions on such premises to persons entering for a recreational purpose unless there is a willful or malicious failure to guard or warn against a dangerous condition, or unless consideration was paid to the US (including a nonappropriated fund instrumentality) to use the premises.

■ 35. Revise newly redesignated § 842.41 to read as follows:

§ 842.41 Applicable law.

This section provides the existing law governing liability, measurement of liability and the effects of settlement upon awards.

(a) *Federal preemption.* Many of the exclusions in this subpart are based upon the wording of 28 U.S.C. 2680 or other federal statutes or court decisions interpreting the Federal Tort Claims Act. Federal case law interpreting the same exclusions under the Federal Tort Claims Act is applied to the Military Claims Act. Where state law differs with federal law, federal law prevails.

(b) *Extent of liability.* Where the claim arises is important in determining the extent of liability.

(1) *Applicable law.* When a claim arises in the United States, its territories or possessions, the same law as if the claim was cognizable under the FTCA will be applied.

(2) *Claims in foreign countries.* In claims arising in a foreign country, where the claim is for personal injury, death, or damage to or loss of real or personal property caused by an act or omission alleged to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the United States acting within the scope of their employment, liability or the United States is determined according to federal case law interpreting the FTCA. Where the FTCA requires application of the law of the place where the act or omission occurred, settlement authorities will use the rules set forth in the currently adopted edition of the *Restatement of the* Law, published by the American Law Institute, to evaluate the liability of the Air Force, subject to the following rules:

(i) Foreign rules and regulations governing the operation of motor vehicles (rules of the road) are applied to the extent those rules are not specifically superseded or preempted by United States military traffic regulations.

(ii) Absolute or strict liability will not apply for claims not arising from noncombat activities.

(iii) Hedonic damages are not payable.

(iv) The collateral source doctrine does not apply.

(v) Joint and several liability does not apply. Payment will be made only upon the portion of loss, damage, injury or death attributable to the Armed Forces of the United States.

(vi) Future economic loss will be discounted to present value after deducting for federal income taxes and, in cases of wrongful death, personal consumption.

(c) *Claims not payable.* Do not approve payment for:

(i) Punitive damages.

(ii) Cost of medical or hospital services furnished at the expense of the United States.

(iii) Cost of burial expenses paid by the United States.

(d) *Settlement by insurer or joint tortfeasor.* When settlement is made by an insurer or joint tortfeasor and an additional award is warranted, an award may be made if both of the following are present:

(1) The United States is not protected by the release executed by the claimant.

(2) The total amount received from such source is first deducted.

■ 36. Amend newly redesignated § 842.42, by revising paragraphs (a) and (c) to read as follows:

§ 842.42 Appeal of final denials.

(a) A claimant may appeal the final denial of the claim. The claimant sends the request, in writing, to the settlement authority that issued the denial letter within 60 days of the date the denial letter was mailed. The settlement authority may waive the 60 day time limit for good cause.

* * * * *

(c) Where the settlement authority does not reach a final agreement on an appealed claim, he or she sends the entire claim file to the next higher settlement authority, who is the appellate authority for that claim. Any higher settlement authority may act upon an appeal.

* * * * *

Subpart G—[Redesignated as Subpart E]

■ 37. Redesignate subpart G, consisting of §§ 842.55 through 842.68, as subpart E, consisting of §§ 842.45 through 842.58, respectively.

■ 38. Revise newly redesignated § 842.47 to read as follows:

§ 842.47 Delegations of authority.

(a) *Settlement authority.* (1) The Secretary of the Air Force has the authority to:

(i) Settle claims for payment of $100,000 or less.

(ii) Settle claims for more than $100,000, pay the first $100,000, and report the excess to the Department of the Treasury for payment.

(iii) Deny claims in any amount.

(2) The Judge Advocate General, Deputy Judge Advocate General, Director of Civil Law, and the Chief, Deputy Chief and Branch Chiefs, Claims and Tort Litigation Staff are FCCs and have delegated authority to:

(i) Settle claims for payment of $100,000 or less.

(ii) Deny claims in any amount.

(3) The SJAs of the Air Force component commander of the US geographic combatant commands are FCC for claims arising in their respective combatant command Areas of Responsibility (AORs) and may deny claims of $50,000 or less and will pay claims filed in any amount when payment is for $50,000 or less.

(b) *Redelegating settlement authority.* A settlement authority appointed as a FCC in paragraph (a) of this section may appoint one or more subordinate judge advocates or civilian attorneys to act as FCC, and redelegate all or part of that settlement authority to such persons.

(c) *Settlement negotiations.* A settlement authority may settle a claim in any sum within its settlement authority, regardless of the amount claimed. Send uncompromised claims in excess of the delegated authority through claims channels to the level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

(d) *Special exceptions.* Do not settle claims for medical malpractice without HQ USAF/JACC approval.

■ 39. Amend newly redesignated § 842.48 by revising paragraph (a) to read as follows:

§ 842.48 Filing a claim.

(a) *How and when filed.* A claim is filed when the Air Force receives from a claimant or authorized agent a properly completed SF 95 or other signed and written demand for money damages in a sum certain. A claim may be presented orally only if oral claims are the custom in the country where the incident occurred and the claimant is functionally illiterate. In any case where an oral claim is made, claims personnel must promptly reduce the claim to writing with all particulars carefully noted. A claim belonging to another agency is promptly transferred to the appropriate agency.

* * * * *

■ 40. Revise newly redesignated § 842.49 to read as follows:

§ 842.49 Advance payments.

Subpart P of this part outlines procedures for advance payments.

■ 41. Amend newly redesignated § 842.50 by revising paragraph (a) to read as follows:

§ 842.50 Statute of limitations.

(a) A claim must be presented to the Air Force within 2 years after it accrues. It accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss or injury.

* * * * *

■ 42. Amend newly redesignated § 842.52 by revising paragraphs (a) and (b) to read as follows:

§ 842.52 Who are proper claimants.

* * * * *

(a) Foreign nationals. In a wrongful death case, if the decedent is an inhabitant of a foreign country, even though his or her survivors are US inhabitants, the FCA will apply.

(b) US nationals residing abroad, unless the claim arises from a benefit, privilege or service provided to them by the US Government, or they reside in the foreign country primarily because they are employed directly by the United States, or sponsored by or accompanying such a person, or employed by a US civilian contractor in furtherance of a contract with the US Government, or sponsored by or accompanying such a person.

* * * * *

■ 43. Amend newly redesignated § 842.53 by revising paragraphs (b), (c), and (e) to read as follows:

§ 842.53 Who are not proper claimants.

* * * * *

(b) Persons determined to be US inhabitants. US inhabitants include dependents of US military personnel and US Government civilian employees.

(c) Foreign military personnel suffering personal injury, or death arising incident to service or pursuant to combined and/or joint military operations. Such operations include, but are not limited to, military exercises and United Nations, NATO, and other regional peacekeeping and humanitarian missions.

* * * * *

(e) National governments and their political subdivisions engaging in war or armed conflict with the United States or its allies. This includes factions that have not necessarily been recognized by the international community as a legitimate nation state.

* * * * *

■ 44. Amend newly redesignated § 842.54 by:

■ a. Revising paragraph (a).

■ b. Removing paragraph (b).

■ c. Redesignating paragraph (c) as paragraph (b).

The revision reads as follows:

§ 842.54 Payment criteria.

* * * * *

(a) The incident causing the damage or injury must arise in a foreign country and be caused by noncombatant activities of the US Armed Forces or by the negligent or wrongful acts of civilian employees or military members of the Armed Forces.

(1) It is a prerequisite to US responsibility if the employee causing the damage or injury is a local inhabitant, a prisoner of war, or an interned enemy alien. These persons are ''employees'' within the meaning of the Foreign Claims Act (FCA) only when in the service of the United States. Ordinarily, a slight deviation as to time or place does not constitute a departure from the scope of employment. The purpose of the activity and whether it furthers the general interest of the United States is considered. If the claim arose from the operation or use of a US Armed Forces vehicle or other equipment by such a person, pay it provided local law imposes liability on the owner of the vehicle or other equipment in the circumstances involved.

(2) It is immaterial when the claim arises from the acts or omissions of any US Armed Forces member or employee not listed in § 842.64(c)(1). The Act imposes responsibility on the United States when it places a US citizen or non-US citizen employee in a position to cause the injury or damage. If the cause is a criminal act clearly outside the scope of employment, ordinarily pay the claim and consider disciplinary action against the offender.

* * * * *

■ 45. Amend newly redesignated § 842.55 by:

■ a. Revising paragraphs (a), (c), (f), (h), (m), (o), and (q).

■ b. Adding paragraphs (s) and (t).

The revisions and additions read as follows:

§ 842.55 Claims not payable.

* * * * *

(a) Is waived under an applicable international agreement, or pursuant to an applicable international agreement, a receiving state should adjudicate and pay the claim. However, if a foreign government subject to such an international agreement disputes its legal responsibilities under the agreement, and the claimant has no other means of compensation, USAF/JACC may authorize payment.

* * * * *

(c) Is for attorney fees, punitive damages, a judgment or interest on a judgment, bail, or court costs. FCC should consider providing early notice to claimants that attorney fees are not payable as an item of damage under the FCA.

* * * * *

(f) Is a paternity claim.

* * * * *

(h) Results wholly from the negligent or wrongful act of the claimant or agent.

* * * * *

(m) Results from an action by an enemy, or directly or indirectly from an act of the US Armed Forces in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft

of the US Armed Forces, including its airborne ordnance, indirectly related to combat, and occurring while preparing for or going to, or returning from a combat mission.

* * * * *

(o) Arises out of personal activities of family members, guests, servants, or activities of the pets of members and employees of the US Armed Forces.

* * * * *

(q) Is covered under US admiralty or maritime laws, unless authorized by The Judge Advocate General or Chief, Claims and Tort Litigation Staff.

* * * * *

(s) Is not in the best interest of the United States, is contrary to public policy, or otherwise contrary to the basic intent of the FCA. Claims considered not payable on this basis will be forwarded to USAF/JACC for final decision.

(t) Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the settlement authority determines the claimant is, and at the time of the incident was, friendly to the United States. Exception: A prisoner of war or interned enemy alien is not excluded from filing a claim for damage, loss, or destruction of personal property within the US Armed Forces' custody if the claim is otherwise payable.

■ 46. Revise newly redesignated § 842.56 to read as follows:

§ 842.56 Applicable law.

This section provides guidance to determine the applicable law for assessment of liability.

(a) In adjudicating FCA claims, settlement authorities will follow the law, customs, and standards of the country where the claim arose, except:

(1) Causation is determined based upon general principles of US tort law found in federal case law and standard legal publications.

(2) Joint and several liability does not apply. Payment is based solely on the portion of loss, damage, injury or death attributable to the US Armed Forces.

(3) If lost income or lost profits is recoverable under the law where the claim arose, they shall be limited to net lost income or net lost profits, taking into account appropriate deductions for taxes, regular business expenditures, and in the case of wrongful death, personal consumption during the loss period.

(b) Settlement authorities will not deduct compensation from collateral sources except for:

(1) Direct payments by a member or civilian employee of the US Armed Forces for damages (not solatia).

(2) Any payments recovered or recoverable from an insurance policy when premiums were paid, directly or indirectly, by the United States, or a member or civilian employee of the US Armed Forces; or when the member or employee has the benefit of the insurance (such as when a US member or employee borrows a vehicle of a local national, and the vehicle carries insurance for the benefit of any driver with permission to drive the vehicle).

■ 47. Revise newly redesignated § 842.57 to read as follows:

§ 842.57 Reconsideration of final denials.

This section provides the procedures used to reconsider a final denial.

(a) An FCC has the inherent authority to reconsider a final decision. The mere fact that a request for reconsideration is received does not obligate the settlement authority to reopen the claim.

(b) The FCC does not mention a reconsideration right in the original denial letter.

(c) A settlement authority must reconsider the final action when there is:

(1) New and material evidence concerning the claim; or

(2) Obvious errors in the original decision.

(d) The FCC must document in the claim file the reason for reconsideration.

(e) A FCC above the original settlement authority may direct a claim be forwarded to a higher FCC for reconsideration.

■ 48. Revise newly redesignated § 842.58 to read as follows:

§ 842.58 Right of subrogation, indemnity, and contribution.

The Air Force has all the rights of subrogation, indemnity and contribution, as local law permits. However, settlement authorities will not seek contribution or indemnity from US military members or civilian employees whose conduct gave rise to US Government liability, or whenever it would be harmful to international relations.

Subpart H—[Redesignated as Subpart F]

■ 49. Redesignate subpart H, consisting of §§ 842.69 through 842.72, as subpart F, consisting of §§ 842.59 through 842.62, respectively.

■ 50. Revise newly redesignated § 842.59 to read as follows:

§ 842.59 Scope of this subpart.

This subpart governs Air Force actions in investigating, processing, and settling claims under the International Agreement Claims Act.

■ 51. Amend newly redesignated § 842.60 by revising paragraphs (a), (d), (e), (f), and (g) to read as follows:

§ 842.60 Definitions.

* * * * *

(a) *Civilian component.* Civilian personnel accompanying and employed by an international agreement contracting force. Local employees, contractor employees, or members of the American Red Cross are not a part of the civilian component unless specifically included in the agreement.

* * * * *

(d) *Legally responsible.* A term of art providing for settlement of claims under cost sharing international agreements in accordance with the law of the receiving state. Often, employees who are local inhabitants, not part of the civilian component of the force, could cause the sending state to be legally responsible under a respondeat superior theory.

(e) *Receiving state.* The country where the force or civilian component of another contracting party is temporarily located. It is often thought of as the ''host nation.''

(f) *Sending state.* The country sending the force or civilian component to the receiving State. In cases where US personnel are stationed in a foreign country, the US is the sending state.

(g) *Third parties.* A term of art used in International Agreements. Parties other than members of the force and civilian component of the sending or receiving States. Dependents, tourists, and other noninhabitants of a foreign country are third parties (and therefore can generally make a claim under a SOFA) unless the international agreement, or an understanding between the countries involved, specifically excludes them.

■ 52. Revise newly redesignated § 842.61 to read as follows:

§ 842.61 Delegations of authority.

(a) *Overseas settlement authority.* Staff Judge Advocates of the Air Force component commands of the US geographic combatant commands will, within their combatant command AORs, fulfill US obligations concerning claims abroad subject to 10 U.S.C. 2734a for which the Air Force has settlement authority. Consistent with 10 U.S.C. 2734a and the international agreement, they may reimburse or pay the pro rata share of a claim as agreed, or if inconsistent with the IACA or the

international agreement, they may object to a bill presented,

(b) *Settlement authority.* The Secretary of the Air Force, The Judge Advocate General, the Deputy Judge Advocate General, The Director of Civil Law and Chief of the Claims and Tort Litigation Division may also exercise settlement authority under 10 U.S.C. 2734a.

(c) *Redelegation of authority.* A settlement authority may redelegate his or her authority to a subordinate judge advocate or civilian attorney in writing.

(d) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

■ 53. Amend newly redesignated § 842.62 by revising paragraph (b) to read as follows:

§ 842.62 Filing a claim.

* * * * *

(b) *Claims arising in the United States.* The claimant files tort claims arising from the act or omission of military or civilian personnel of another contracting party at any US military installation. The Staff Judge Advocate for the installation where such military or civilian personnel is assigned or attached will promptly notify the Foreign Claims Branch of USAF/JACC as well as the Commander, US Army Claims Service. If the claimant files said claim at an installation other than the location where said military or civilian personnel is assigned, the Staff Judge Advocate for that installation will promptly forward the claim to the appropriate installation Staff Judge Advocate.

Subpart I—[Redesignated as Subpart G]

■ 54. Redesignate subpart I, consisting of §§ 842.73 through 842.81 as subpart G, consisting of §§ 842.63 through 842.71, respectively.

■ 55. Revise newly redesignated § 842.63 to read as follows:

§ 842.63 Scope of this subpart.

This subpart explains how to settle and pay claims against the United States, for property damage, personal injury, or death incident to the use of a government vehicle or any other government property on a government installation which are not payable under any other statute.

■ 56. Amend newly redesignated § 842.65 by revising paragraph (a)(5) to read as follows:

§ 842.65 Delegations of authority.

(a) * * *

(5) SJA of the Air Force component commands of the US geographic combatant commands.

* * * * *

■ 57. Amend newly redesignated § 842.68 by:

■ a. Removing the parentheses in the second sentence of paragraph (a).

■ b. Revising paragraph (c).

The revision reads as follows:

§ 842.68 Claims payable.

* * * * *

(c) Arose from the use of a government vehicle at any place or from the use of other government property on a government installation.

* * * * *

■ 58. Amend newly redesignated § 842.69 by adding paragraph (e) to read as follows:

§ 842.69 Claims not payable.

* * * * *

(e) For pain and suffering or other general damages.

■ 59. Revise newly redesignated § 842.71 to read as follows:

§ 842.71 Settlement agreement.

Do not pay a claim unless the claimant accepts the amount offered in full satisfaction of the claim and signs a settlement agreement to that effect, in which the claimant agrees to release any and all claims against the United States, its employees and agents arising from the incident in question. Use the settlement agreement approved for use by the Department of Justice for the settlement of FTCA claims, tailored to this claim.

Subpart J—[Redesignated as Subpart H]

■ 60. Redesignate subpart J, consisting of §§ 842.82 through 842.85, as subpart H, consisting of §§ 842.72 through 842.75, respectively.

■ 61. Amend newly redesignated § 842.74 by:

■ a. Revising paragraph (a)(1)(i).

■ b. Removing and reserving paragraph (a)(1)(ii) and removing paragraph (a)(1)(iii).

■ c. Revising paragraph (b)(3)(iv).

The revisions read as follows:

§ 842.74 Delegations of authority.

(a) * * *

(1) * * *

(i) Settle or deny a claim in any amount. Settlements for payment of more than $500,000 are certified to Congress for payment.

* * * * *

(b) * * *

(3) * * *

(iv) The Chief and Deputy Chief, Claims and Tort Litigation Division.

■ 62. In newly redesignated § 842.75, add paragraph (c) to read as follows:

§ 842.75 Reconsidering claims against the United States.

* * * * *

(c) There is no time limit for submitting a request for reconsideration, but it is within the discretion of the settlement authority to decline to reconsider a claim based on the amount of time passed since the claim was originally denied.

Subpart K—[Removed]

■ 63. Remove subpart K, consisting of §§ 842.86 through 842.91.

■ 64. Add new subpart I, consisting of §§ 842.76 through 842.79, to read as follows:

Subpart I—Claims Under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2402, 2671, 2672, 2674–2680)

Sec.
842.76 Scope of this subpart.
842.77 Delegations of authority.
842.78 Settlement agreements.
842.79 Administrative claim; when presented.

Subpart I—Claims Under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2402, 2671, 2672, 2674–2680)

§ 842.76 Scope of this subpart.

This subpart, promulgated under the authority of 28 CFR 14.11, governs claims against the United States for property damage, personal injury, or death, from the negligent or wrongful acts or omission of Air Force military or civilian personnel while acting within the scope of their employment.

§ 842.77 Delegations of authority.

(a) *Settlement authority.* The following individuals are delegated the full authority of the Secretary of the Air Force to settle and deny claims:

(1) The Judge Advocate General.

(2) The Deputy Judge Advocate General.

(3) The Director of Civil Law.

(4) The Division Chief of Claims and Tort Litigation.

(5) The Division Chief of Environmental Law and Litigation.

(b) *Redelegation of authority.* A settlement authority may be redelegated, in writing, to a subordinate judge advocate or civilian attorney. The Chief, AFLOA/JACC may redelegate up to $25,000, in writing, to paralegals assigned to AFLOA/JACC and, upon request, may authorize installation Staff

Judge Advocates to redelegate their settlement authority to paralegals under their supervision.

(c) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

(d) *Settlement negotiations.* A settlement authority may settle a claim filed in any amount for a sum within the delegated authority. Unsettled claims in excess of the delegated authority will be sent to the next highest level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

§ 842.78 Settlement agreements.

The claimant must sign a settlement agreement and general release before any payment is made.

§ 842.79 Administrative claim; when presented.

When the Air Force is the proper agency to receive a claim pursuant to 28 CFR 14.2(b), for purposes of the provisions of 28 U.S.C. 2401(b), 2672 and 2675, a claim shall be deemed to have been presented when it is received by:

(a) The office of the Staff Judge Advocate of the Air Force installation nearest the location of the incident; or

(b) The Claims and Tort Litigation Division, 1500 West Perimeter Road, Suite 1700, Joint Base Andrews, MD 20762.

Subpart L—[Redesignated as Subpart J]

■ 65. Redesignate subpart L, consisting of §§ 842.92 through 842.99, as subpart J, consisting of §§ 842.80 through 842.87, respectively.

■ 66. Revise newly redesigated § 842.80 to read as follows:

§ 842.80 Scope of this subpart.

This subpart describes how to assert, administer, and collect claims for damage to or loss or destruction of government property and lost wages of Air Force servicemembers through negligent or wrongful acts. It does not cover admiralty, hospital recovery, or nonappropriated fund claims.

■ 67. Amend newly redesignated § 842.81 by revising paragraph (a) to read as follows:

§ 842.81 Delegations of authority.

(a) *Settlement authority.* (1) The following individuals have delegated authority to settle, compromise, suspend, or terminate action on claims asserted for $100,000 or less and to accept full payment on any claim:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(2) Installation staff judge advocates have authority to assert claims in any amount, accept full payment on any claim and to compromise, suspend or terminate action on claims asserted for $25,000 or less.

* * * * *

■ 68. Amend newly redesignated § 842.82 by revising paragraphs (a)(2), (c), and (e) to read as follows:

§ 842.82 Assertable claims.

* * * * *

(a) * * *

(2) Less than $100 but collection is practicable and economical.

* * * * *

(c) The claim is for property damage arising from the same incident as a hospital recovery claim.

* * * * *

(e) The claim is assertable as a counterclaim under an international agreement. (The claim should be processed under subpart G of this part).

* * * * *

■ 69. Amend newly redesignated § 842.83 by revising paragraph (b)(2) and adding paragraph (f) to read as follows:

§ 842.83 Non-assertable claims.

* * * * *

(b) * * *

(2) Caused by a person who has accountability and responsibility for the damaged property under the Report of Survey system.

* * * * *

(f) Loss or damage caused by an employee of another federal agency while the employee was acting in the scope of his employment.

■ 70. Revise newly redesignated § 842.85 to read as follows:

§ 842.85 Referring a claim to the US Attorney or the Department of Justice.

If collection efforts are unsuccessful, AFLOA/JACC may refer a claim to the appropriate US Attorney's Office or the Department of Justice for initiation of a lawsuit.

Subpart M—[Redesignated as Subpart K]

■ 71. Redesignate subpart M, consisting of §§ 842.100 through 842.114, as subpart K, consisting of §§ 842.88 through 842.102, respectively.

■ 72. Revise newly redesignated § 842.88 to read as follows:

§ 842.88 Scope of this subpart.

This subpart establishes policies and procedures for all administrative claims under the National Guard Claims Act for which the Air Force has assigned responsibility. Unless otherwise outlined in this subpart, follow procedures as outlined in subpart E of this part for claims arising out of noncombat activities.

■ 73. Revise newly redesignated § 842.89 to read as follows:

§ 842.89 Definitions.

(a) *Air National Guard (ANG).* The federally recognized Air National Guard of each state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

(b) *ANG member.* An ANG member is one who is performing duty under 32 U.S.C., section 316, 502, 503, 504, or 505 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(c) *ANG duty status*—(1) *Active federal service.* ANG members may serve on active Federal duty under 10 U.S.C. to augment the active Air Force under certain circumstances or for certain types of duty or training (*e.g.,* overseas training exercises and ANG alert duty). Duty under 10 U.S.C. does not fall under this subpart.

(2) *Federally funded duty.* ANG members perform specified federally funded duty or training under 32 U.S.C. such as weekend drills, annual training, field exercises, range firing, military schooling, full time unit support, or recruiting duties. Duty under 32 U.S.C. falls under this subpart for noncombat activities.

(3) *State duty.* State duty is duty not authorized by federal law but required by the governor of the state and paid for from state funds. Such duty includes civil emergencies (natural or other disasters), civil disturbances (riots and strikes), and transportation requirements for official state functions, public health, or safety. State duty does not fall under this subpart.

(d) *ANG technicians.* An ANG technician is a Federal employee employed under 32 U.S.C. 709. Tort claims arising out of his or her activity are settled under the Federal Tort Claims Act (FTCA).

■ 74. Amend newly redesignated § 842.90 by:

■ a. Removing the introductory text.

■ b. Revising paragraphs (a)(4) and (5) and (b).

■ c. Removing paragraph (f)(1) and redesignating paragraphs (f)(2) and (3) as (f)(1) and (2), respectively.

The revisions read as follows:

§ 842.90 Delegations of authority.

(a) * * *

(4) The SJAs of the Air Force component commander of the US geographic combatant commands for claims arising within their respective combatant command areas of responsibility have delegated authority to settle claims payable or to deny claims filed for $25,000 or less.

(5) SJAs of GCMs in PACAF and USAFE have delegated authority to settle claims payable, and deny claims filed, for $15,000 or less.

(b) *Redelegation of authority.* A settlement authority may redelegate up to $25,000 of settlement authority to a subordinate judge advocate or civilian attorney. This redelegation must be in writing and can be for all claims or limited to a single claim. The Chief, AFLOA/JACC may redelegate up to $25,000, in writing, to paralegals assigned to AFLOA/JACC and, upon request, may authorize installation Staff Judge Advocates to redelegate their settlement authority to paralegals under their supervision.

* * * * *

■ 75. Revise newly redesignated § 842.91 to read as follows:

§ 842.91 Filing a claim.

(a) *Elements of a proper claim.* A claim is must be filed on a Standard Form 95 or other written document. It must be signed by the Claimant or authorized agent, be for money damages in a sum certain, and lay out a basic statement as to the nature of the claim that will allow the Air Force to investigate the allegations contained therein.

(b) *Amending a claim.* A claimant may amend a claim at any time prior to final action. To amend a claim the claimant or his or her authorized agent must submit a written, signed demand.

■ 76. Revise newly redesignated § 842.92 to read as follows:

§ 842.92 Advance payments.

Subpart P of this part sets forth procedures for such payments.

■ 77. Revise newly redesignated § 842.93 to read as follows:

§ 842.93 Statute of limitations.

(a) A claim must be filed in writing within 2 years after it accrues. It is deemed to be filed upon receipt by The Judge Advocate General, USAF/JACC, or a Staff Judge Advocate of the Air Force. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss. The same rules governing accrual pursuant to the Federal Tort Claims Act should be applied with respect to the National Guard Claims Act. Upon receipt of a claim that properly belongs with another military department, the claim is promptly transferred to that department.

(b) The statutory time period excludes the day of the incident and includes the day the claim was filed.

(c) A claim filed after the statute of limitations has run is considered if the US is at war or in an armed conflict when the claim accrues or if the US enters a war or armed conflict after the claim accrues, and if good causes shows how the war or armed conflict prevented the claimant from diligently filing the claim within the statute of limitations. But in no case will a claim be considered if filed more than two years after the war or armed conflict ends.

■ 78. Revise newly redesignated § 842.94 to read as follows:

§ 842.94 Who may file a claim.

The following individuals may file a claim under this subpart.

(a) Owners of the property or their authorized agents may file claims for property damage.

(b) Injured persons or their duly authorized agents may file claims for personal injury.

(c) Duly appointed guardians of minor children or any other persons legally entitled to do so under applicable local law may file claims for minors' personal injuries.

(d) Executors or administrators of a decedent's estate or another person legally entitled to do so under applicable local law, may file claims based on:

(1) An individual's death.

(2) A cause of action surviving an individual's death.

(e) Insurers with subrogation rights may file claims for losses paid in full by them. The parties may file claims jointly or individually, to the extent of each party's interest, for losses partially paid by insurers with subrogation rights.

(f) Authorized agents signing claims show their title or legal capacity and present evidence of authority to present the claims.

■ 79. Revise newly redesignated § 842.95 to read as follows:

§ 842.95 Who are proper claimants.

(a) Citizens and inhabitants of the United States. US inhabitants includes dependents of the US military personnel and federal civilian employees temporarily outside the US for purposes of US Government service.

(b) US military personnel and civilian employees. Note: These personnel are not proper claimants for claims for personal injury or death that occurred incident to their service.

(c) Foreign military personnel when the damage or injury occurs in the US. Do not pay for claims under the MCA for personal injury or death of a foreign military personnel that occurred incident to their service.

(d) States, state agencies, counties, or municipalities, or their political subdivisions.

(e) Subrogees of proper claimants to the extent they have paid for the claim in question.

■ 80. Revise newly redesignated § 842.96 to read as follows:

§ 842.96 Who are not proper claimants.

(a) Governments of foreign nations, their agencies, political subdivisions, or municipalities.

(b) Agencies and nonappropriated fund instrumentalities of the US Government including the District of Columbia government.

(c) Inhabitants of foreign countries.

(d) The state, territory and its political subdivisions whose Air National Guard member caused the loss.

(e) Subrogees of the claimants in paragraphs (a) through (d) of this section.

■ 81. Revise newly redesignated § 842.97 to read as follows:

§ 842.97 Claims payable.

Claims arising from noncombat activities of the United States when caused by ANG members performing duty under 32 U.S.C. and acting within the scope of their employment, whether or not such injuries or damages arose out of their negligent or wrongful acts or omissions.

■ 82. In newly redesignated § 842.98, revise paragraphs (a), (b), and (c) to read as follows:

§ 842.98 Claims not payable.

* * * * *

(a) Claims covered by the FTCA, FCA, IACA, 10 U.S.C. 2734a and 2734b, Air Force Admiralty Claims Act (AFACA), 10 U.S.C. 9801–9804, 9806, MCA, 10 U.S.C. 2733, or covered under the Military Personnel and Civilian Employees' Claims Act (MPCECA), 31 U.S.C. 3701, 3721.

(b) NGCA claims arising from noncombat activities in the US are not covered by the FTCA because more elements are needed to state an FTCA claim than are needed to state a claim under the NGCA for noncombat activities. All FTCA claims are based on elements of traditional tort liability (*i.e.,* duty, breach, causation, and damages); that is, they are fault based. Noncombat

activity claims under the NGCA are based solely on causation and damages. Because NGCA claims for noncombat activities are not fault based, they are not covered by the FTCA.

(c) See subpart E of this part for other claims not payable.

* * * * *

■ 83. Revise newly redesignated § 842.99 to read as follows:

§ 842.99 Applicable law.

(a) *Federal preemption.* Many of the exclusions in this subpart are based upon the wording of 28 U.S.C. 2680 or other federal statutes or court decisions interpreting the Federal Tort Claims Act. Federal case law interpreting the same exclusions under the Federal Tort Claims Act is applied to the National Guard Claims Act. Where state law differs with federal law, federal law prevails.

(b) *Extent of liability.* Where the claim arises is important in determining the extent of liability.

(1) *Applicable law.* When a claim arises in the United States, its territories or possessions, the same law as if the claim was cognizable under the FTCA will be applied.

(2) *Claims in foreign countries.* In claims arising in a foreign country, where the claim is for personal injury, death, or damage to or loss of real or personal property caused by an act or omission alleged to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the United States acting within the scope of their employment, liability or the United States is determined according to federal case law interpreting the FTCA. Where the FTCA requires application of the law of the place where the act or omission occurred, settlement authorities will use the rules set forth in the currently adopted edition of the *Restatement of the Law,* published by the American Law Institute, to evaluate the liability of the Air Force, subject to the following rules:

(i) Absolute or strict liability will not apply for claims not arising from noncombat activities.

(ii) Hedonic damages are not payable.

(iii) The collateral source doctrine will not apply.

(iv) Joint and several liability does not apply. Payment will be made only upon the portion of loss, damage, injury or death attributable to the Armed Forces of the United States.

(v) Future economic loss will be discounted to present value after deducting for federal income taxes and, in cases of wrongful death, personal consumption.

(c) *Claims not payable.* Do not approve payment for:

(1) Punitive damages.

(2) Cost of medical or hospital services furnished at US expense.

(3) Cost of burial expenses paid by the United States.

(d) *Settlement by insurer or joint tortfeasor.* When settlement is made by an insurer or joint tortfeasor and an additional award is warranted, an award may be made if both of the following are present:

(1) The United States is not protected by the release executed by the claimant.

(2) The total amount received from such source is first deducted.

■ 84. Revise newly redesignated § 842.100 to read as follows:

§ 842.100 Appeal of final denials.

This section explains the steps to take when a denial is appealed.

(a) A claimant may appeal the final denial of the claim. The claimant sends the request, in writing, to the settlement authority that issued the denial letter within 60 days of the date the denial letter was mailed. The settlement authority may waive the 60 day time limit for good cause.

(b) Upon receipt of the appeal, the original settlement authority reviews the appeal.

(c) Where the settlement authority does not reach a final agreement on an appealed claim, he or she sends the entire claim file to the next higher settlement authority, who is the appellate authority for that claim. Any higher settlement authority may act upon an appeal.

(d) The decision of the appellate authority is the final administrative action on the claim.

■ 85. Revise newly redesignated § 842.101 to read as follows:

§ 842.101 Government's right of subrogation, indemnity, and contribution.

The Air Force becomes subrogated to the rights of the claimant upon settling a claim. The Air Force has the rights of contribution and indemnity permitted by the law of the situs or under contract. Do not seek contribution or indemnity from ANG members whose conduct gave rise to Government liability.

■ 86. Revise newly redesignated § 842.102 to read as follows:

§ 842.102 Attorney fees.

In the settlement of any claim pursuant to 32 U.S.C. 715 and this subpart, attorney fees will not exceed 20 percent of any award provided that when a claim involves payment of an award over $1,000,000, attorney fees on that part of the award exceeding $1,000,000 may be determined by the Secretary of the Air Force. For the purposes of this section, an award is deemed to be the cost to the United States at the time of purchase of a structured settlement, and not its future value.

Subpart N—[Redesignated as Subpart L]

■ 87. Redesignate subpart N, consisting of §§ 842.115 through 842.125 as subpart L, consisting of §§ 842.103 through 842.113, respectively.

■ 88. Revise newly redesignated § 842.103 to read as follows:

§ 842.103 Scope of this subpart.

This subpart explains how the United States asserts and settles claims for costs of medical care, against third parties under the Federal Medical Care Recovery Act (FMCRA) (10 U.S.C. 1095) and various other laws.

■ 89. Amend newly redesignated § 842.104 by revising the introductory text and paragraph (a) and adding paragraphs (h) and (i) to read as follows:

§ 842.104 Definitions.

This section defines terms which are used within this subpart.

(a) *Medical Cost Reimbursement Program Regional Field Offices.* The Chief of the Medical Cost Reimbursement Program (MCRP) Branch determines and assigns geographic responsibility for all regional field offices. Each field office is responsible for investigating all potential claims and asserting claims within their jurisdiction for the cost of medical care provided by either a Medical Treatment Facility or at a civilian facility through Tricare.

* * * * *

(h) *Accrued pay.* The total of all pay accrued to the account of an active duty member during a period when the member is unable to perform military duties. It does not include allowances.

(i) *Future care.* Medical care reasonably expected to be provided or paid for in the future treatment of an injured party as determined during the investigative process.

■ 90. Revise newly redesignated § 842.105 to read as follows:

§ 842.105 Delegations of authority.

(a) *Settlement authority.* The following individuals have delegated authority to settle, compromise, or waive MCRP claims for $300,000 or less and to accept full payment on any claim:

(1) The Judge Advocate General.

(2) The Deputy Judge Advocate General.

(3) The Director of Civil Law.

(4) Chief, Claims and Tort Litigation Staff and the Chief, MCRP.

(b) *Redelegation of authority.* The individuals described in paragraph (a) of this section may re-delegate a portion or all of their authority to subordinates, subject to the following limitations:

(1) SJAs, when given Medical Cost Reimbursement (MCR) claims jurisdiction, are granted authority to waive, compromise, or settle claims in amounts of $25,000 or less. This authority may be re-delegated in writing with authority to re-delegate to subordinates.

(2) SJAs of numbered Air Forces, when given MCR claims jurisdiction, are granted authority to waive, compromise, or settle claims in amounts of $40,000 or less. This authority may be re-delegated in writing with authority to re-delegate to subordinates.

(3) SJAs of single base GCMs, the SJAs of GCMs in PACAF and USAFE, and the SJAs of each Air Force base, station, or fixed installation have delegated authority to compromise or waive claims for $15,000 or less and to accept full payment on any claim.

(c) *Authority to assert a claim.* Each settlement authority has authority to assert a claim in any amount for the reasonable value of medical care.

(d) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

(e) *Settlement negotiations.* A settlement authority may settle a claim filed for an amount within the delegated settlement authority. Claims in excess of the delegated authority must be approved by the next higher settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

Note to paragraph (e): Telephonic approvals, in the discretion of the higher settlement authority, are authorized.

(f) *Special exceptions.* Only the Department of Justice (DOJ) may approve claims involving:

(1) Compromise or waiver of a claim for more than $300,000.

(2) Settlement previously referred to DOJ.

(3) Settlement where a third party files suit against the US or the injured party arising out of the same incident.

■ 91. Revise newly redesignated § 842.107 to read as follows:

§ 842.107 Nonassertable claims.

The following are considered nonassertable claims and should not be asserted:

(a) *Claims against any department, agency, or instrumentality of the United States.* ''Agency or instrumentality'' includes any self-insured nonappropriated fund activity whether revenue producing, welfare, or sundry. The term does not include private associations.

(b) *Claims for care furnished a veteran by the Department of Veterans Affairs (VA) for service connected disability.* However, claims may be asserted for the reasonable value of medical care an Air Force member receives prior to his or her discharge and transfer to the VA facility or when the Air Force has reimbursed the VA facility for the care.

(c) *Claims for care furnished a merchant seaman under 42 U.S.C. 249.* A claim against the seaman's employer should not be filed.

(d) *Government contractors.* In claims in which the United States must reimburse the contractor for a claim according to the terms of the contract, settlement authorities investigate the circumstances surrounding the incident to determine if assertion is appropriate. If the US is not required to reimburse the contractor, the MCR authority may assert a claim against the contractor.

(e) *Foreign governments.* Settlement authorities investigate any claims that might be made against foreign governments, their political subdivisions, armed forces members or civilian employees.

(f) *U.S. personnel.* Claims are not asserted against members of the uniformed services; employees of the US, its agencies or instrumentalities; or an individual who is a dependent of a service member or employee at the time of assertion unless they have insurance to pay the claim, they were required by law or regulation to have insurance which would have covered the Air Force, or their actions, which necessitated the medical treatment provided at government expense, constituted willful misconduct or gross negligence.

■ 92. Amend newly redesignated § 842.108 by revising paragraphs (a) and (b) to read as follows:

§ 842.108 Asserting the claim.

* * * * *

(a) MCR personnel assert a claim against a tortfeasor or other third party using a formal letter on Air Force stationery. The assertion is made against all potential payers, including insurers. The demand letter should state the legal basis for recovery and sufficiently describe the facts and circumstances surrounding the incident giving rise to medical care. Applicable bases of recovery include US status as a third-party beneficiary under various types of insurance policies, workers' compensation laws, no-fault laws, or other Federal statutes, including Coordination of Benefits (COB) or FMCRA.

(b) The MCR authority must promptly notify the injured parties or their legal representatives, in writing, that the United States will attempt to recover from the third parties the reasonable value of medical care furnished or to be furnished and that they:

(1) Should seek advice from a legal assistance officer or civilian counsel.

(2) Must cooperate in the prosecution of all actions of the United States against third parties.

(3) Must furnish a complete statement regarding the facts and circumstances surrounding the incident which caused the injury.

(4) Must not execute a release or settle any claim which exists as a result of the injury without prior notice to the MCR authority.

* * * * *

■ 93. Revise newly redesignated § 842.109 to read as follows:

§ 842.109 Referring a claim to the US Attorney.

(a) All cases that require forwarding to the DoJ must be routed through the Chief, MCRP. The MCR authority ensures that personnel review all claims for possible referral not later than two years after the date of the incident for tort based cases.

(b) The United States or the injured party on behalf of the United States must file suit within 3 years after an action accrues. This is usually 3 years after the initial treatment is provided in a federal medical facility or after the initial payment is made by Tricare, whichever is first.

■ 94. Revise newly redesignated § 842.111 to read as follows:

§ 842.111 Recovery rates in government facilities.

The **Federal Register** contains the rates set by the Office of Management and Budget, of which judges take judicial notice. Apply the rates in effect at the time of care to claims.

■ 95. Revise newly redesignated § 842.112 to read as follows:

§ 842.112 Waiver and compromise of United States interest.

Waivers and compromises of government claims can be made. This section lists the basic guidance for each action. (See this subpart for claims involving waiver and compromise of amounts in excess of settlement authorities' delegated amounts.)

(a) *Convenience of the Government.* When compromising or waiving a claim

for convenience of the Government, settlement authorities should consider the following factors:

(1) Risks of litigation.

(2) Questionable liability of the third party.

(3) Costs of litigation.

(4) Insurance (Uninsured or Underinsured Motorist and Medical Payment Coverage) or other assets of the tortfeasor available to satisfy a judgment for the entire claim.

(5) Potential counterclaim against the US.

(6) Jury verdict expectancy amount.

(7) Amount of settlement with proposed distribution.

(8) Cost of any future care.

(9) Tortfeasor cannot be located.

(10) Tortfeasor is judgment proof.

(11) Tortfeasor has refused to pay and the case is too weak for litigation.

(b) *Hardship on the injured party.* When compromising or waiving a claim to avoid undue hardship on the injured party, settlement authorities should consider the following factors:

(1) Permanent disability or disfigurement of the injured party.

(2) Decreased earning power of the injured party.

(3) Out of pocket losses to the injured party.

(4) Financial status of the injured party.

(5) Pension rights of the injured party.

(6) Other government benefits available to the injured party.

(7) An offer of settlement from a third party which includes virtually all of the thirty party's assets, although the amount is considerably less than the calculation of the injured party's damages.

(8) Whether the injured party received excessive treatment.

(9) Amount of settlement with proposed distribution, including reductions in fees or damages by other parties, medical providers, or attorneys in order to reduce the hardship on the injured party.

(c) *Compromise or waiver.* A compromise or waiver can be made upon written request from the injured party or the injured party's legal representative.

■ 96. Revise newly redesignated § 842.113 to read as follows:

§ 842.113 Reconsideration of a waiver for undue hardship.

A settlement authority may reconsider its previous action on a request for waiver or compromise whether requested or not. Reconsideration is normally on the basis of new evidence or discovery of errors in the waiver submission or settlement, but can be based upon a re-evaluation of the claim by the settlement authority.

Subpart O—[Removed]

■ 97. Remove subpart O, consisting of §§ 842.126 through 842.136.

■ 98. Add new subpart M, consisting of §§ 842.114 through 842.117, to read as follows:

Subpart M—Nonappropriated Fund Claims

Sec.
842.114 Scope of this subpart.
842.115 Definitions.
842.116 Payment of claims against NAFIs.
842.117 Claims by customers, members, participants, or authorized users.

§ 842.114 Scope of this subpart.

This subpart describes how to settle claims for and against the United States for property damage, personal injury, or death arising out of the operation of nonappropriated fund instrumentalities (NAFIs). Unless stated below, such claims will follow procedures outlined in other subparts of this part for the substantive law applicable to the particular claim. For example, a NAFI claim adjudicated under the Federal Tort Claims Act will follow procedures in this subpart as well as subpart K of this part.

§ 842.115 Definitions.

(a) *Army and Air Force Exchange Service (AAFES).* The Army and Air Force Exchange Service is a joint command of the Army and Air Force, under the jurisdiction of the Chiefs of Staff of the Army and Air Force, which provides exchange and motion picture services to authorized patrons.

(b) *Morale, welfare, and recreation (MWR) activities.* Air Force MWR activities are activities operated directly or by contract which provide programs to promote morale and well-being of the Air Force's military and civilian personnel and their dependents. They may be funded wholly with appropriated funds, primarily with nonappropriated funds (NAF), or with a combination of appropriated funds and NAFs.

(c) *Nonappropriated funds.* Nonappropriated funds are funds generated by Department of Defense military and civilian personnel and their dependents and used to augment funds appropriated by the Congress to provide a comprehensive morale-building, welfare, religious, educational, and recreational program, designed to improve the well-being of military and civilian personnel and their dependents.

(d) *Nonappropriated funds instrumentality.* A nonappropriated fund instrumentality is a Federal Government instrumentality established to generate and administer nonappropriated funds for programs and services contributing to the mental and physical well-being of personnel.

§ 842.116 Payment of claims against NAFIs.

Substantiated claims against NAFIs must not be paid solely from appropriated funds. Claims are sent for payment as set out in this subpart. Do not delay paying a claimant because doubt exists whether to use appropriated funds or NAFs. Pay the claim initially from appropriated funds and decide the correct funding source later.

§ 842.117 Claims by customers, members, participants, or authorized users.

(a) *Customer complaints.* Do not adjudicate claims complaints or claims for property loss or damage under this subpart that the local NAFI activity can satisfactorily resolve.

(b) *Claims generated by concessionaires.* Most concessionaires must have commercial insurance. Any unresolved claims or complaints against concessionaires or their insurers are sent to the appropriate contracting officers.

Subpart P—[Redesignated as Subpart N]

■ 99. Redesignate subpart P, consisting of §§ 842.137 through 842.143, as subpart N, consisting of §§ 842.118 through 842.124.

■ 100. Revise newly redesignated § 842.118 to read as follows:

§ 842.118 Scope of this subpart.

(a) This subpart explains how to process certain administrative claims:

(1) Against the United States for property damage, personal injury, or death, arising out of Air Force assigned noncombat missions performed by the Civil Air Patrol (CAP), as well as certain other Air Force authorized missions performed by the CAP in support of the Federal Government.

(2) In favor of the United States for damage to US Government property caused by CAP members or third parties.

(b) Unless stated in this subpart, such claims will follow procedures outlined in other subparts of this part for the substantive law applicable to the particular claim. For example, a CAP claim adjudicated under the Military Claims Act will follow procedures in this subpart as well as subpart E of this part.

§§ 842.120 and 842.121 [Removed]

■ 101. Remove newly redesignated §§ 842.120 and 842.121.

§§ 842.122 through 842.124 [Redesignated as §§ 842.120 through 842.122]

■ 102. Newly redesignated §§ 842.122 through 842.124 are further redesignated as §§ 842.120 through 842.122, respectively.

Subpart Q—[Redesignated as Subpart O]

■ 103. Redesignate subpart Q, consisting of §§ 842.144 through 842.150, as subpart O, consisting of §§ 842.123 through 842.129.

■ 104. Revise newly redesignated § 842.123 to read as follows:

§ 842.123 Scope of this subpart.

This subpart tells how to make an advance payment before a claim is filed or finalized under the Military Claims, Foreign Claims and National Guard Claims Acts.

■ 105. In newly redesignated § 842.124, revise paragraph (c)(4) to read as follows:

§ 842.124 Delegation of authority.

* * * * *

(c) * * *

(4) SJAs of the Air Force component commander of the U.S. geographic combatant commands for claims arising within their respective combatant command areas of responsibility.

* * * * *

■ 106. In newly redesignated § 842.126, revise paragraph (b) to read as follows:

§ 842.126 When authorized.

* * * * *

(b) The potential claimant has an immediate need amounting to a hardship for food, shelter, medical or burial expenses, or other necessities. In the case of a commercial enterprise, severe financial loss or bankruptcy will result if the Air Force does not make an advance payment.

* * * * *

Henry Williams,

Acting Air Force Federal Liaison Officer.

[FR Doc. 2016–25554 Filed 11–21–16; 8:45 am]

BILLING CODE 5001–10–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2014–0492; FRL–9955–50–OAR]

RIN 2060–AR97

Clarification of Requirements for Method 303 Certification Training

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing revisions to better define the requirements associated with conducting Method 303 training courses. Method 303 is an air pollution test method used to determine the presence of visible emissions (VE) from coke ovens. This action adds language that clarifies the criteria used by the EPA to determine the competency of Method 303 training providers, but does not change the requirements for conducting the test method. These revisions will help entities interested in conducting the required training courses by clearly defining the requirements necessary to do so.

DATES: The final rule is effective on December 22, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2014–0492. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Kim Garnett, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (Mail Code: E143–02), Research Triangle Park, NC 27711; telephone number: (919) 541–1158; fax number: (919) 541–0516; email address: *garnett.kim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information
  A. Does this action apply to me?
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  G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act (NTTAA)
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

This action applies to you if you are a potential provider of Method 303 training services, someone seeking training to conduct Method 303, or a facility subject to Method 303.

B. What action is the agency taking?

This final action adds language that further clarifies the criteria used by the EPA to determine the competency of Method 303 training providers, but does not change the requirements for conducting the test method.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by January 23, 2017. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Background

On October 27, 1993, we published Method 303 for determining VE from

coke ovens (58 FR 57898). Method 303 is applicable for the determination of VE from the following by-product coke oven battery sources: Charging systems during charging; doors, topside port lids and offtake systems on operating coke ovens; and collecting mains. Method 303 is also applicable to qualifying observers for visually determining the presence of VE from by-product coke ovens. The EPA received inquiries from state/local agencies seeking the specifics of the procedures used to qualify observers. The EPA proposed these clarifications on February 25, 2016 (81 FR 9407). We received public comments from two individuals.

III. Changes Included in the Final Method 303 Clarification

Method 303 section 10.1 (40 CFR part 63, appendix B) presently states that ''*The Method 303 course shall be conducted by or under the sanction of the EPA and shall consist of classroom instruction, field observation, and a proficiency test. . . .*'' We are amending this language by removing the statement indicating that these courses be conducted by or under the sanction of the EPA. Instead, Administrator-approved training providers will be allowed to conduct Method 303 training and certification. We are, therefore, revising Method 303 to define the administrative and recordkeeping requirements that must be followed by Method 303 training providers. This action: (1) Defines Administrator approval of Method 303 training providers, clarifies the minimum training course requirements, and details the recordkeeping requirements that the training provider must follow in order to attain Administrator approval (section 10.1); (2) adds language to clarify that VE readers must demonstrate a perfect score on the recertification exam (section 10.1.2); (3) updates and expands the criteria used to determine who is qualified to participate on the proficiency test panel (section 10.1.3); (4) adds criteria for training certificates, submittal of this information, and recordkeeping (sections 10.1.4–10.1.6); and (5) defines conditions for suspension of the training provider's approval by the Administrator (section 10.1.7). There are no changes to the requirements for conducting the test method.

IV. Comments and Responses

A. Technology Improvement

The first commenter suggested that the EPA should require the inspector to utilize digital imagery to document the visible emission observation. This comment is beyond the scope of the present action. This action does not involve the merits of Method 303, but rather training requirements in order for observers to be qualified to conduct Method 303 testing. No change to the rule was made in response to this comment.

B. Training Requirements

The first commenter, also, stated that the quality of third-party Method 9 lectures is simply not good enough to ensure that any level of training is achieved, and seems to suggest that the Method 9 lecture is the only training involved. While attending the lecture portion of Method 9 is a prerequisite to receiving Method 303 certification, this requirement is to ensure individuals have a basic understanding of opacity measurement. It is not the sole training requirement. For example, the trainee must successfully complete the Method 303 training course, satisfy the field observation requirement, and demonstrate adequate performance and sufficient knowledge of Method 303 (see section 10.1). A trainee must also verify completion of at least 12 hours of field observation prior to attending the Method 303 certification course (see section 10.1.1). There are numerous other requirements as well. Therefore, the EPA believes an approved Method 303 training course will be comprehensive enough to assure that individuals who receive certification to determine VE from coke oven battery sources are proficient regardless of any perceived inadequacy of Method 9 lectures. No change to the rule was made in response to this comment.

The second commenter expressed concerns over the possible use of ad hoc panel members, stating these panel members may have inconsistent interpretations of Method 303 and different inspection practices at the plants. The EPA agrees with the comment regarding the make-up of the certification panel, and is amending the Method 303 rule language in section 10.1.3 to specify that the composition of the panel will be approved by the Administrator as part of the training course approval process. During this approval process, the experience of each panel member will be reviewed in order to ensure consistency.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action better defines the requirements associated with conducting Method 303 training courses and does not impose additional regulatory requirements on sources.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action better defines the requirements associated with conducting Method 303 training courses and does not impose additional regulatory requirements on sources.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more for as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This action clarifies the criteria used by the EPA to determine the competency of training providers, but does not change the requirements for conducting the test method. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action would make corrections and updates to an existing protocol for assessing the precision and accuracy of alternative test methods to ensure they are comparable to the methods otherwise required; thus, it does not modify or affect the impacts to human health or the environment of any standards for which it may be used.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 23, 2017.

Clarification of Requirements for Method 303 Certification Training

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Test methods.

Dated: November 8, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the EPA is amending title 40, chapter I of the Code of Federal Regulations as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. In Appendix A, amend Method 303:
■ a. In section 5.0 by revising paragraph 5.2; and
■ b. In section 10.0 by:
■ i. Revising paragraphs 10.1, 10.1.1, 10.1.2, and 10.1.3;
■ ii. Adding paragraphs 10.1.4, 10.1.5, 10.1.6, and 10.1.7; and
■ iii. Revising paragraph 10.2.

The revisions and additions read as follows.

Appendix A to Part 63—Test Methods

* * * * *

Method 303—Determination of Visible Emissions From By-Product Coke Oven Batteries

* * * * *

5.0 Safety

* * * * *

5.2 Safety Training. Because coke oven batteries have hazardous environments, the training materials and the field training (section 10.0) shall cover the precautions required to address health and safety hazards.

* * * * *

10.0 Calibration and Standardization

* * * * *

10.1 Certification Procedures. This method requires only the determination of whether VE occur and does not require the determination of opacity levels; therefore, observer certification according to Method 9 in appendix A to part 60 of this chapter is not required to obtain certification under this method. However, in order to receive Method 303 observer certification, the first-time observer (trainee) shall have attended the lecture portion of the Method 9 certification course. In addition, the trainee shall successfully complete the Method 303 training course, satisfy the field observation requirement, and demonstrate adequate performance and sufficient knowledge of Method 303. The Method 303 training provider and course shall be approved by the Administrator and shall consist of classroom instruction, field training, and a proficiency test. In order to apply for approval as a Method 303 training provider, an applicant must submit their credentials and the details of their Method 303 training course to Group Leader, Measurement Technology Group (E143–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. Those details should include, at a minimum:

(a) A detailed list of the provider's credentials.

(b) An outline of the classroom and the field portions of the class.

(c) Copies of the written training and lecture materials, to include:

(1) The classroom audio-visual presentation(s).

(2) A classroom course manual with instructional text, practice questions and problems for each of the elements of the Method 303 inspection (*i.e.,* charging, doors, lids and offtakes, and collecting mains). A copy of Method 303 and any related guidance documents should be included as appendices.

(3) A copy of the Method 303 demonstration video, if not using the one available at: *http://www3.epa.gov/ttn/emc/methods/method303trainingvideo.mp4.*

(4) Multiple-choice certification tests, with questions sufficient to demonstrate knowledge of the method, as follows: One (1) Initial certification test and three (3) third-year recertification tests (the questions on any one recertification test must be at least 25 percent different from those on the other recertification tests).

(5) A field certification checklist and inspection forms for each of the elements of the Method 303 inspection (*i.e.,* charging, doors, lids and offtakes, and collecting mains).

(6) The criteria used to determine proficiency.

(7) The panel members to be utilized (see Section 10.1.3) along with their qualifications.

(8) An example certificate of successful course completion.

10.1.1 A trainee must verify completion of at least 12 hours of field observation prior to attending the Method 303 certification course. Trainees shall observe the operation of a coke oven battery as it pertains to Method 303, including topside operations, and shall also practice conducting Method 303 or similar methods. During the field observations, trainees unfamiliar with coke battery operations shall receive instruction from an experienced coke oven observer who is familiar with Method 303 or similar methods and with the operation of coke batteries.

10.1.2 The classroom instruction shall familiarize the trainees with Method 303 through lecture, written training materials, and a Method 303 demonstration video. Successful completion of the classroom portion of the Method 303 training course shall be demonstrated by a perfect score on the initial certification test. Those attending the course for third-year recertification must complete one of the recertification tests selected at random.

10.1.3 All trainees must demonstrate proficiency in the application of Method 303 to a panel of three certified Method 303

observers, including an ability to differentiate coke oven emissions from condensing water vapor and smoldering coal. The composition of the panel must be approved by the Administrator as part of the training course approval process. The panel members will be EPA, state or local agency personnel, or industry contractors listed in 59 FR 11960 (March 15, 1994) or qualified as part of the training provider approval process of section 10.1 of this method.

Each panel member shall have at least 120 days experience in reading visible emissions from coke ovens. The visible emissions inspections that will satisfy the experience requirement must be inspections of coke oven battery fugitive emissions from the emission points subject to emission standards under subpart L of this part (*i.e.,* coke oven doors, topside port lids, offtake system(s), and charging operations), using either Method 303 or predecessor state or local test methods. A ''day's experience'' for a particular inspection is a day on which one complete inspection was performed for that emission point under Method 303 or a predecessor state or local method. A ''day's experience'' does not mean 8 or 10 hours performing inspections, or any particular time expressed in minutes or hours that may have been spent performing them. Thus, it would be possible for an individual to qualify as a Method 303 panel member for some emission points, but not others (*e.g.,* an individual might satisfy the experience requirement for coke oven doors, but not topside port lids). Until November 15, 1994, the EPA may waive the certification requirement (but not the experience requirement) for panel members. The composition of the panel shall be approved by the EPA.

The panel shall observe the trainee in a series of training runs and a series of certification runs. There shall be a minimum of 1 training run for doors, topside port lids, and offtake systems, and a minimum of 5 training runs (*i.e.,* 5 charges) for charging. During training runs, the panel can advise the trainee on proper procedures. There shall be a minimum of 3 certification runs for doors, topside port lids, and offtake systems, and a minimum of 15 certification runs for charging (*i.e.,* 15 charges). The certification runs shall be unassisted. Following the certification test runs, the panel shall approve or disapprove certification based on the trainee's performance during the certification runs. To obtain certification, the trainee shall demonstrate, to the satisfaction of the panel, a high degree of proficiency in performing Method 303. To aid in evaluating the trainee's performance, a checklist, approved by the EPA, will be used by the panel members.

10.1.4 Those successfully completing the initial certification or third-year recertification requirements shall receive a certificate showing certification as a Method 303 observer and the beginning and ending dates of the certification period.

10.1.5 The training provider will submit to the EPA or its designee the following information for each trainee successfully completing initial certification or third-year recertification training: Name, employer, address, telephone, cell and/or fax numbers, email address, beginning and ending dates of certification, and whether training was for 3-year certification or 1-year recertification. This information must be submitted within 30 days of the course completion.

10.1.6 The training provider will maintain the following records, to be made available to EPA or its designee on request (within 30 days of a request):

(a) A file for each Method 303 observer containing the signed certification checklists, certification forms and test results for their initial certification, and any subsequent third-year recertifications. Initial certification records must also include documentation showing successful completion of the training prerequisites. Testing results from any interim recertifications must also be included, along with any relevant communications.

(b) A searchable master electronic database of all persons for whom initial certification, third-year recertification or interim recertification. Information contained therein must include: The observer's name, employer, address, telephone, cell and fax numbers and email address, along with the beginning and ending dates for each successfully completed initial, third-year and interim recertification.

10.1.7 Failure by the training provider to submit example training course materials and/or requested training records to the Administrator may result in suspension of the approval of the provider and course.

10.2 Observer Certification/Recertification. The coke oven observer certification is valid for 1 year. The observer shall recertify annually by reviewing the training material, viewing the training video and answering all of the questions on the recertification test correctly. Every 3 years, an observer shall be required to pass the proficiency test in section 10.1.3 in order to be certified. The years between proficiency tests are referred to as interim years.

* * * * *

[FR Doc. 2016–28097 Filed 11–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0488; FRL–9953–40]

Spodoptera frugiperda Multiple Nucleopolyhedrovirus Strain 3AP2; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Spodoptera frugiperda* multiple nucleopolyhedrovirus strain 3AP2 in or on all food commodities when used in accordance with label directions and good agricultural practices. MacIntosh and Associates, Inc. (on behalf of AgBiTech Pty Ltd.) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Spodoptera frugiperda* multiple nucleopolyhedrovirus strain 3AP2 under FFDCA.

DATES: This regulation is effective November 22, 2016. Objections and requests for hearings must be received on or before January 23, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0488, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0488 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 23, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0488, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background

In the **Federal Register** of November 25, 2015 (80 FR 73695) (FRL–9937–14), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 5F8361) by MacIntosh and Associates, Inc., 1203 Hartford Ave., St. Paul, MN 55116–1622 (on behalf of AgBiTech Pty Ltd, 8 Rocla Ct., Glenvale, Queensland 4350, Australia). The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Spodoptera frugiperda* multiple nucleopolyhedrovirus—3AP2 in or on food crops. That document referenced a summary of the petition prepared by the petitioner MacIntosh and Associates, Inc. (on behalf of AgBiTech Pty Ltd), which is available in the docket via *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of a particular pesticide's . . . residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicity and exposure data on *Spodoptera frugiperda* multiple nucleopolyhedrovirus strain 3AP2 and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on that data can be found within the August 31, 2016, document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Spodoptera frugiperda* Multiple Nucleopolyhedrovirus strain 3AP2.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**. Based upon its evaluation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Spodoptera frugiperda* multiple nucleopolyhedrovirus strain 3AP2. Therefore, an exemption from the requirement of a tolerance is established for residues of *Spodoptera frugiperda* multiple nucleopolyhedrovirus strain 3AP2 in or on all food commodities when used in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes for the reasons contained in the August 31, 2016, document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Spodoptera frugiperda* Multiple Nucleopolyhedrovirus strain 3AP2'' and because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive

Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

V. Congressional Review Act

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 in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 20, 2016.

Jack E. Housenger,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.1339 to subpart D to read as follows:

§ 180.1339 *Spodoptera frugiperda* multiple nucleopolyhedrovirus strain 3AP2; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Spodoptera frugiperda* multiple nucleopolyhedrovirus strain 3AP2 in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2016–28099 Filed 11–21–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; FCC 16–143]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts tailored service obligations for Alaska Communications Systems (ACS), a carrier serving a non-contiguous area that elected to receive nearly $20 million annually in Connect America Phase II frozen support amounts in lieu of model-based support.

DATES: Effective December 22, 2016, except for the certification in paragraph 33 which contains a new information collection requirement that will not be effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for that certification.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in WC Docket No. 10–90; FCC 16–143, adopted on October 24, 2016 and released on October 31, 2016. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, or at the following Internet address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db1031/FCC-16-143A1.pdf.*

I. Introduction

1. In this Order, the Commission adopts tailored service obligations for Alaska Communications Systems (ACS), a carrier serving a non-contiguous area that elected to receive nearly $20 million annually in Connect America Phase II frozen support amounts in lieu of model-based support. The Commission finds these obligations are in the public interest and will advance the Commission's goal of ensuring universal availability of modern networks capable of providing voice and broadband service. Specifically, ACS will receive Phase II frozen support for a 10-year term and be required to offer voice service and broadband service at the same speed, latency, usage and pricing metrics as established for Phase II model-based carriers to at least 31,571 locations, primarily in census blocks identified as high-cost that are unserved by unsubsidized competitors, with limited exceptions. These service obligations strike the appropriate balance of ensuring Alaska consumers receive broadband service while also allowing ACS the flexibility to provide that service in a way that is logical, maximizes its network and is reasonable considering the unique climate and geographic conditions of its service territory.

II. Discussion

2. As described below, the Commission adopts specific service obligations for ACS as a non-contiguous carrier electing to receive Phase II frozen support. The service obligations established today maintain many of the same public interest standards as those established for model-based price cap carriers, but allow flexibility in both buildout locations and the deployment schedule to account for the distinctive

geographic and climate challenges of building and providing voice and broadband service in Alaska. By adopting these standards today, the Commission establishes clear deadlines for planning and deploying new broadband services to consumers in Alaska, as well as clear obligations to maintain existing service. The Commission finds these service obligations are in the public interest as ACS will provide advanced communication service to at least 31,571 locations.

3. *Speed.* The Commission adopts 10/1 Mbps as the minimum broadband speed requirement for ACS's Phase II broadband deployment.

4. ACS stated in its comments in response to the *April 2014 Connect America FNPRM,* 79 FR 39196, July 9, 2014, that it intends to provide speeds of at least 10/1 Mbps in its service territory and did not request a lesser speed in any location. In fact, ACS stated that it prefers a 10/1 Mbps service obligation, and planned its proposal accordingly. ACS explains that providing 10/1 Mbps service is more costly, however, than providing 4/1 Mbps service and requests that the 10/1 Mbps standard only be adopted if a ten-year term of support is adopted.

5. In the *December 2014 Connect America Order,* 80 FR 4446, January 27, 2015, the Commission adopted 10/1 Mbps as the minimum broadband speed for all ETCs subject to broadband performance obligations. Although the Commission has determined that 25/3 Mbps reflects ''advanced'' capabilities, the Commission has explained that ''[b]y setting a lower baseline for Connect America funding, the Commission establishes a framework to ensure a basic level of service to be available for all Americans, while at the same time working to provide access to advanced services.'' Based on the record before us, the Commission sees no reason to apply a different standard to ACS. Accordingly, the Commission adopts 10/1 Mbps as the minimum broadband speed requirement for deployment of broadband services to a specified number of locations in the ACS service territory and as a condition of receiving frozen support. While this represents the minimum, consistent with our recent decision to improve oversight over the outcomes achieved by rate-of-return carriers, ACS will also report to us the number of locations that will receive 25/3 Mbps service so that the Commission can track progress over time in achieving higher speeds.

6. *Latency.* The Commission adopts a roundtrip provider network latency requirement of 100 ms or less for ACS's Phase II broadband deployment.

7. In the *April 2014 Connect America FNPRM,* the Commission proposed that non-contiguous carriers be required to meet a roundtrip provider network latency of 100 ms or less. The Commission proposed that non-contiguous carriers choosing frozen support conduct their latency network testing from the customer location to a point at which traffic is consolidated for transport to an Internet exchange point in the continental United States. The Commission also proposed exempting non-contiguous carriers from the latency requirements to the extent the carriers rely exclusively on satellite backhaul facility and certify annually that no terrestrial backhaul options exist.

8. ACS stated in its comments that it intends to meet the Phase II parameters for roundtrip latency of 100 ms or less. Further, ACS confirms that none of the areas where it proposes to deploy new broadband rely exclusively on the use of satellite backhaul to deliver service. Accordingly, there is no reason in the record before us to relax the latency standard for ACS' proposed Phase II deployment. The Commission adopts the same requirement as implemented by the Bureau for model-based carriers in the *Phase II Service Obligations Order,* 78 FR 70881, November 27, 2013. Specifically, ACS must certify that 95 percent or more of all peak period measurements (also referred to as observations) of network round trip latency are at or below 100 ms. The measurements should be conducted over a minimum of two consecutive weeks during peak hours for at least 50 randomly-selected customer locations within the census blocks for which the provider is receiving frozen support using existing network management systems, ping tests, or other commonly available network measurement tools. ACS should conduct its latency network testing from the customer location to a point at which traffic is consolidated for transport to an Internet exchange point in the continental United States. The Commission adopts this latency standard for deployment of broadband services in the ACS service territory and as a condition of receiving of frozen support.

9. *Usage Allowance.* The Commission concludes that ACS will be required to provide a usage allowance that evolves over time to remain reasonably comparable to usage by subscribers in urban areas, similar to the approach adopted for price cap carriers.

10. In the *April 2014 Connect America FNPRM,* the Commission proposed that non-contiguous carriers continuing to receive frozen support be subject to the same usage allowance as that specified by the Bureau for price cap carriers receiving model-based support. Under the approach previously implemented by the Bureau for Phase II model-based support, price cap carriers must either provide a usage allowance based on the nationwide annual urban rate survey, or a usage allowance consistent with the usage level of 80 percent of their own broadband subscribers including those subscribers that live outside of Phase II-funded areas, subject to a 100 gigabyte (GB) per month floor. The Commission sought comment on whether—in light of the potentially unique circumstances in non-contiguous areas—it would be appropriate to relax the 100 GB minimum usage allowance for non-contiguous carriers and instead allow them to meet their usage requirements based on a comparison to 80 percent of their entire subscriber base. The Commission also proposed exempting non-contiguous carriers from the usage requirements to the extent the carriers rely exclusively on satellite backhaul facility and certify annually that no terrestrial backhaul options exist.

11. ACS stated in its comments that it intends to meet the Phase II obligations for usage and did not suggest any relaxation of the usage requirement was necessary. ACS also later explained that it is not its practice or policy to impose a data usage cap on its customers, and ACS has no intention of limiting usage in the future. ACS proposes to be subject to the same usage standard as that required for those carriers accepting the offer of model-based support.

12. Earlier this year, the Bureau announced that, based on the most recent publicly available Measuring Broadband America data, 80 percent of cable subscribers nationwide are using 156 GB, and it therefore set the 2016 minimum usage allowance for eligible telecommunications carriers subject to broadband public interest obligations at 150 GB per month. The Commission concludes that ACS as a non-contiguous carrier should be subject to the same general approach as implemented by the Bureau for the carriers that accepted model-based support. Like the price cap carriers receiving model-based support, the Commission requires ACS to offer at least one service option that provides a usage allowance that meets or exceeds the usage level of 80 percent of cable or fiber-based fixed broadband subscribers, whichever is higher, according to the most current publicly available Measuring Broadband America usage data. This minimum will be announced

annually by the Bureau. Alternatively, ACS may offer a usage allowance consistent with the usage level of 80 percent of its own broadband subscribers, including those subscribers that live outside of Phase II-funded areas, subject to a 150 GB floor. The Commission concludes it appropriate to update the minimum floor that ACS will be subject to in light of the more current information regarding usage trends. The Commission expects that ACS should have no problems meeting this requirement given its representation that it does not currently impose a usage limit on its customers or have any intent to do so in the future.

13. *Reasonably Comparable Rates.* ACS will be subject to the same obligation as all other recipients of high-cost universal service support to provide voice and broadband service at reasonably comparable rates.

14. In the *April 2014 Connect America FNPRM,* the Commission proposed to require non-contiguous carriers electing frozen support to offer both voice and broadband service at rates reasonably comparable to those services offered in urban areas. The Commission proposed the same two options for showing reasonable comparability as were adopted for model-based carriers: compliance with reasonable comparability benchmarks or a certification by the carrier that it offers the same or lower rates in rural areas as it does in urban areas. The Commission sought comment on whether non-contiguous carriers would face any challenges meeting this requirement. ACS stated in its comments that it does not anticipate challenges in meeting the statutory requirement to provide voice and broadband service at rates reasonably comparable to those offered in urban areas.

15. In a separate order, the Commission recently directed the Wireline Competition Bureau to establish an Alaska-specific reasonable comparability benchmark using data from its urban rate survey or other sources, as appropriate. The Commission will provide ACS the same two options for demonstrating compliance with this statutory requirement: by meeting the Alaska-specific benchmark or offering the same or lower rates in rural areas as it does in urban areas. As with model-based carriers, ACS will be required to certify annual compliance with this requirement as explained further below.

16. The Commission adopts a 10-year term of support for ACS's Phase II frozen support (2016–2025). As noted above, in the *April 2014 Connect America FNPRM,* the Commission sought comment on whether to specify a five-year term for those non-contiguous carriers that elect to receive frozen support, and whether there is a need to modify the term of support for such non-contiguous carriers. The Commission sought comment on any specific extenuating circumstances in non-contiguous areas that would require extending the term of frozen support for longer than five years.

17. ACS stated in its proposal that it will require a 10-year term of support to complete buildout to the stated number of locations and that buildout within five years is impossible. ACS explained that due to the harsh weather conditions of Alaska it is forced into a shortened construction season of three to four summer months throughout its service territory and thus a slower pace of progress. Further, ACS states it is challenged by decreased availability of experienced and qualified professionals knowledgeable in designing and deploying these services in Alaska—extending the time required to plan for deployment. Also, due to its remote northern location and unique construction limitations, ACS claims that it also confronts higher costs for broadband deployment. Ultimately, ACS argues these factors together require a 10-year term of support.

18. The Commission recognizes the climate and geographic challenges ACS faces in serving Alaska and find that adopting a 10-year term of support for ACS is in the public interest. While the Commission expects ACS to use its best efforts to expedite deployment, the Commission recognizes the shortened construction season and limited availability of experienced personnel is a unique limitation for ACS in Alaska that could slow the pace of buildout. Accordingly, the Commission adopts a 10-year term of support for ACS as a non-contiguous carrier electing Phase II frozen support, which will run from January 1, 2016, and end on December 31, 2025. For administrative reasons, the Commission finds it necessary to conform the term of support to the calendar year, to align reporting and other monitoring activities with that of other carriers. As discussed more completely below, ACS will be required to report its proposed list of locations by October 1, 2018. In year eight, the Commission expects it will conduct a rulemaking to determine how support will be awarded to serve these locations after the end of the ten-year period.

19. In the *April 2014 Connect America FNPRM,* the Commission sought comment on the specific build out obligations that non-contiguous carriers receiving frozen support would have in those census blocks that do not currently have broadband service meeting the Commission's requirements. Specifically, the Commission asked whether non-contiguous carriers receiving frozen support should be required to deploy voice and broadband-capable networks and offer services meeting the adopted performance metrics to all locations in those funded areas, consistent with the state-level commitments required of carriers receiving model-based support. In the alternative, the Commission asked whether these carriers should be allowed to serve some subset of locations within their respective service areas where the average cost equals or exceeds the funding benchmark established by the Bureau. Lastly, the Commission asked whether they should also be required to extend broadband-capable networks to locations in census blocks determined by the model to be above the extremely high-cost threshold.

20. ACS elected to receive Phase II frozen support for its entire service territory, and therefore, none of the census blocks in its service territory are eligible for the Phase II competitive bidding process. Below, the Commission addresses the specific geographic parameters for ACS' provision of voice and broadband service within its existing designated service territory and provide ACS with flexibility in its broadband deployment to account for the unique nature of serving Alaska. The Commission also provides ACS with forbearance relief consistent with the relief it provided other price cap carriers.

21. *Number of Locations.* The Commission requires ACS to offer voice and broadband service to a minimum of 31,571 locations that are not served by an unsubsidized competitor at 10/1 Mbps or better to meet its Phase II obligations, subject to the flexibility described below.

22. ACS proposes to use Phase II frozen support to offer service to a minimum of 26,000 locations that are not served by any provider, which would occur in those census blocks that were identified as high-cost by the cost model with certain exceptions discussed below. Initially, ACS proposed to offer service to 29,418 locations but later revised that number to 26,000. ACS explains that its initial calculation was based on CAM v4.1.1 and the revision was due to a recalculation using newer data from CAM v4.2, which excluded locations served by subsidized competitors. ACS then adjusted its initial estimate to exclude the off-road census blocks in the Alaskan Bush that ACS does not

propose to serve with broadband at this time.

23. While ACS proposes to establish a deployment obligation with a minimum number of locations, it does not provide a specific list of proposed census blocks or locations at this time. Instead, ACS suggests that two years will be necessary for planning, coordination and identifying the total number and precise locations for buildout. ACS claims that it needs this time to ''fully explore the most efficient options for network infrastructure deployment.'' Once the pre-planning and coordination stage is completed, ACS intends to submit a list to the Commission of its proposed locations.

24. Based on our review of June 2015 FCC Form 477 data for the number of high-cost locations, the Commission finds that requiring ACS to serve 31,571 locations is reasonable, given the other flexibility provided in this Order. While the Commission hopes that ACS will find after it engages in this planning process that it is possible to offer broadband services to more than 31,571 locations with the amount of funding provided, the Commission adopts this number as a strict minimum. Additionally, while ACS has proposed to select these locations using coverage data from the 2014 National Broadband Map, the Commission instead requires ACS to select its locations in blocks not served by a qualifying competitor using the June 2015 FCC Form 477 data. The Commission also adopts a challenge process for locations in blocks where another provider is reporting service, and for those blocks it requires ACS to utilize more recent publicly available data. This will ensure that support is targeted appropriately to those areas where there are no other providers offering broadband service meeting the Commission's requirements for high-cost support.

25. Consistent with the approach taken with respect to other price cap carriers, the Commission does not dictate which *specific* locations ACS must serve within its eligible areas, so long as it provides voice and broadband service meeting the obligations described in this Order to the minimum number of required locations, subject to the specific parameters adopted below. The Commission emphasizes, however, that it will hold ACS to its commitment to continue providing voice service throughout the Phase II term of support to all locations where it currently provides voice service, including those in the Alaskan Bush.

26. *Partially-served Census Blocks.* In satisfaction of its Phase II deployment obligations, the Commission will allow ACS the flexibility to deploy to up to 7,900 locations unserved by any provider within census blocks that also have locations served by an unsubsidized competitor, which the Commission refers to as ''partially served census blocks,'' subject to the conditions described below.

27. In the *April 2014 Connect America FNPRM,* the Commission proposed that non-contiguous carriers receiving frozen support not use such support in any areas where there is a terrestrial provider of fixed residential voice and broadband service that meets our Phase II performance requirements. However, the Commission also asked whether allowing substitution in partially-served census blocks could enable more effective network deployment and bring service to unserved consumers in those partially-served census blocks. In the *December 2014 Connect America Order,* the Commission declined to adopt the flexibility for non-contiguous carriers receiving frozen support to use support in any census block where there is a competitor providing service of 10/1 Mbps or greater to at least one location within the census block, and instead required them to relinquish the relevant Phase II frozen support for those areas. At the same time, the Commission acknowledged that all parties potentially interested in Connect America support have an interest in building economically efficient networks, which may not neatly align with census boundaries, and the Commission encouraged stakeholders to work together towards proposals that help ensure unserved consumers in partially served census blocks are not left behind.

28. ACS requests the flexibility to substitute up to 25 percent of its eligible locations with unserved locations in partially-served census blocks. ACS explains these substitutions are necessary, because even though the census block is treated as served, due to the geography and topography of the census block, some specific locations within a census block are not in fact served by any carrier. Compared to other states, Alaska has relatively large census blocks. ACS argues it would be more logical and economically efficient for ACS to serve these ''stranded'' customer locations, because in many cases these locations are very near or contiguous to ACS service territory and are clearly not easily served by the competitor given the particular geography of the census block. ACS proposes a public challenge process to ensure the substituted locations are actually unserved. ACS promises the substitutions would be made conservatively and would be limited to unserved locations in eligible census blocks in outlying areas—primarily surrounding Fairbanks and on the Kenai Peninsula.

29. In the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, the Commission decided to target Phase II support to those census blocks that are not served by an unsubsidized competitor. However, the Commission did not foreclose other ways of supporting high-cost locations within partially-served census blocks. Where, as here, there are physically isolated and distinct unserved locations within large census blocks, the Commission is willing to implement an approach that allows it to extend service to unserved consumers, while balancing our policy goal of not providing high-cost support to overbuild locations that are already served by another competitor. The Commission has recognized in other contexts that the fact a competitor reports service on FCC Form 477 does not mean it serves all of the locations within a census block. Therefore, the Commission finds that it is in the public interest to permit ACS to substitute unserved locations in partially-served census blocks for eligible model-based locations, because such locations may not otherwise receive service from ACS or a competitor. However, as suggested by ACS, the Commission limits ACS to no more than 7,900 unserved locations in partially-served census blocks. The Commission also requires ACS to certify that it does not itself serve the locations in such blocks at the time it submits its list, no later than October 1, 2018.

30. *Challenge Process.* The Commission will conduct a challenge process to ensure that all of the selected locations in partially served blocks in fact are unserved by any provider at 10/1 Mbps or better. The coverage data utilized in the cost model was State Broadband Initiative data as of June 2013. The Commission finds that it is in the public interest to ensure that the locations selected are unserved by any fixed, terrestrial competitors, including those that currently receive high-cost universal service support, before allowing ACS to build and deploy services to those locations. ACS suggested a format for conducting challenges for partially-served census blocks similar to the Phase II challenge process. The Commission concludes the process can be streamlined by using an approach similar to that previously adopted by the Commission for reporting changes to planned deployment for Phase I incremental support. Under this approach, the

Commission requires ACS to submit its proposed list of geocoded locations in partially served census blocks as soon as possible, but no later than October 1, 2018, along with certification of notice filed on any carrier that reports service in the relevant census block according to the most recent FCC Form 477 data available at that time, the Regulatory Commission of Alaska, and any relevant Tribal government. To ensure that the public is aware of the proposed deployment plan, the Commission directs the Bureau to issue a public notice announcing the proposed deployment plan, census blocks and geocoded locations. This will give any existing provider the opportunity to notify ACS and the Commission that the provider already serves the identified census blocks and specific locations with service meeting the Commission's standards for an unsubsidized competitor, thereby furthering the Commission's objective of not supporting areas where there are competitors already offering service. The Commission concludes that it is reasonable and most efficient to provide potential existing providers 45 days from the release of the Bureau's public notice to file a response notifying ACS and the Commission that they are currently providing service meeting the requisite requirements to the locations selected by ACS. Any identified locations that receive no response will automatically be deemed eligible for deployment with Phase II frozen support. The Commission delegates to the Bureau the authority to implement this process consistent with prior delegations regarding other challenge processes.

31. *Non-High-Cost Census Blocks.* The Commission adopts the additional flexibility for ACS to deploy to unserved locations within census blocks that were not identified as high-cost by the adopted version of the CAM, subject to the several limitations described below.

32. ACS requests the flexibility to substitute up to 10 percent of its eligible locations with unserved locations in census blocks that were not deemed high-cost by the cost model. ACS argues that the cost model did not accurately capture all of the costs of serving particular census blocks in Alaska, and excluded unserved areas and customers that are truly rural and where the cost to deploy service is in-fact high. For example, ACS explains there are several instances where all the census blocks surrounding a location are identified as high-cost, *i.e.,* eligible for support, but the middle ''land locked'' census block is not identified as such. ACS argues these census blocks are not served today, leaving hundreds of stranded customers without broadband service or the opportunity to be served in the future. ACS argues that it makes good policy and economic sense to let ACS deploy services to the unserved non-high-cost locations that can efficiently be reached during deployment to the eligible high-cost locations. ACS suggests a 10 percent cap on such substitutions.

33. The Commission grants ACS the flexibility to count towards its service obligation up to 2,714 locations in census blocks identified by the model as low-cost, so long as those locations are unserved with broadband by either ACS or a competitor, and the ''low-cost'' census block is immediately adjacent to high-cost census blocks. The Commission finds that it is in the public interest to permit ACS to use its Phase II frozen support to deploy to these unserved locations given the unique geographic characteristics of Alaska. However, as suggested by ACS, the Commission finds a limitation is appropriate. The model calculates that there are 2,714 low-cost, unserved, on-road locations, using June 2015 FCC Form 477 data. As such, the Commission finds it is reasonable and in the public interest to limit ACS to no more than 2,714 location substitutions in such census blocks that are not identified as high-cost by the model. Further, for each location ACS substitutes under the terms of this flexibility, the Commission requires ACS to certify that deployment to that location was, in fact, high cost. Specifically, the Commission requires ACS to certify that the capital expenditures (capex) it incurs to build out to each location within a qualifying ''low-cost'' census block was at least $5,000. According to the model, the average capital expenditure for high-cost locations in Alaska is at least $5,007.95, so the Commission concludes that ACS should only be able to count towards its total these locations if they in fact require at least this amount of capex to newly serve the location. This certification will be due along with the annual location report. ACS may be required to produce documentation regarding its actual capex for such locations to support its certification when USAC validates completion of its deployment obligations or in the course of an audit. Any location that cannot meet this certification will not be counted toward the minimum location requirement.

34. *Forbearance.* The Commission takes the opportunity today to adopt the same forbearance for ACS as it did for other price cap carriers in the *December 2014 Connect America Order.* As the Commission did in that order and for the same reasons, it now concludes that it is in the public interest to forbear, pursuant to section 10 of the Communications Act of 1934, as amended (the Act) from enforcing a federal high-cost requirement that ACS offer voice telephony service throughout its service territory pursuant to section 214(e)(1)(A) in three types of geographic areas: (1) Census blocks determined by the adopted cost model to be low-cost, (2) census blocks served by an unsubsidized competitor, to the extent ACS does not identify locations within partially-served census blocks to meet its deployment obligation, and (3) in census blocks where another ETC is receiving high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations. ACS will be able to avail itself of this forbearance upon the conclusion of the Bureau's review of ACS's submitted locations, and finalization of the specific census blocks containing locations to be served.

35. *Phase I Obligations.* ACS seeks clarification regarding the relationship between Phase I and Phase II obligations with regard to the issue of upgrading facilities. ACS asks whether it can use Phase II frozen support to upgrade locations built in Phase I that are currently served with 4/1 Mbps broadband, and are in census blocks eligible for support in Phase II. The Commission finds it is not in the public interest for ACS to use Phase II funding to upgrade Phase I locations. Consistent with Commission goals of universal service, the Commission finds it is an economically inefficient use of funds at this time to provide support to deploy service to a location and then provide support to upgrade that location while other locations remain unserved entirely. Instead, the Commission's goals are better served by reaching new customers that do not currently have any advanced communication. Therefore, the Commission concludes it is not in the public interest to allow ACS to use its Phase II frozen support funds to upgrade the existing Phase I locations served with 4/1 Mbps to 10/1 Mbps service.

36. *Timeline.* ACS supports interim buildout milestones and requests a timeline that reflects its proposed ten-year term of support. As discussed above, ACS suggests that it needs two years to determine its broadband buildout plan before ACS can begin deployment. Accordingly, ACS suggests buildout milestones that are ''backloaded'' as compared with the model-based timeline—30 percent

completion by year four, 60 percent completion by year seven, and full completion by year ten.

37. Above the Commission adopted a 10-year term of support. The Commission also acknowledged the unique challenges that ACS confronts as a non-contiguous carrier building in Alaska. However, the Commission also wants to ensure that ACS begins construction no later than 2019. Accordingly, the Commission adopts a timeframe that requires ACS to complete its planning by October 1, 2018, with the remaining time to complete deployment of voice and broadband-capable networks. As such, the Commission will require ACS to complete initial planning and submit its proposed list of census blocks and locations to the Commission by October 1, 2018. Thereafter, as explained above, the Commission will conduct an efficient challenge process for those locations in partially served blocks to determine final deployment locations, which the Commission anticipates will be completed during first quarter 2019. ACS will then be able to commence deployment in those partially served census blocks no later than the summer of 2019. Full completion of the planning process is not a requisite, however, for it to begin deployment in the high-cost census blocks not subject to a challenge process. The Commission emphasizes that ACS is not precluded from, and indeed it is encouraged to begin, extending broadband to unserved locations in those high-cost blocks (the high-cost blocks lacking an unsubsidized competitor according to the June 2015 FCC Form 477 data).

38. The Commission is not persuaded that ACS should only be subject to two intermediate milestones for the 10-year term. The Commission recently adopted evenly spaced interim deployment milestones for rate-of-return carriers electing to receive Phase II model-based support. For similar reasons, the Commission concludes here that annual interim milestones are appropriate for ACS. This will enable the Commission to monitor ACS' progress throughout the term of support. Accordingly, the Commission adopts the following timeline for offering broadband service meeting the Commission's requirements: 30 percent of all locations by the end of 2018, 40 percent by the end of 2019, 50 percent by the end of 2020, 60 percent by the end of 2021, 70 percent by the end of 2022, 80 percent by the end of 2023, 90 percent by the end of 2024, and all locations by the end of 2025.

39. *Standard for Meeting Deployment Obligation.* ACS asks that it be allowed to serve between 95–100 percent of its minimum required number of locations, with a reduction in support for the locations not served if those locations are identified by a date certain in the planning process. ACS argues this flexibility is needed due to the inaccuracy of the cost model to determine proper high-cost census blocks in Alaska, and due to the lack of interest in building to these locations should ACS not deploy services there. ACS explains that while the substitution flexibilities will go a long way to correcting the alleged imprecisions of the cost model to provide service to those consumers that need it most, it simply is not enough flexibility.

40. In the *December 2014 Connect America Order,* the Commission allowed price cap carriers the flexibility of deploying to between 95–100 percent of required locations subject to a required refund of support based on the number of required locations left unserved at the end of the support term. The Commission recognized that there may be a variety of unforeseen factors, after the initial planning stage, that can cause significant changes as a network is actually being deployed in the field. The Commission balanced our goal of advancing the availability of broadband to these high-cost locations with this flexibility and adopted a metric to recover support. This metric was based on the assumption that many of the locations left unserved would have higher than the average costs calculated by the model. In particular, the Commission calculated the factor based on the average support for the top five percent of the funded locations nationwide compared to the average support for all funded locations. The Commission then divided that nationwide figure by one-half, in recognition that the average could vary widely between carriers and states.

41. Consistent with the general approach adopted for price cap carriers accepting model-based support in the *December 2014 Connect America Order,* the Commission accepts the ACS proposal and allow ACS the flexibility to build to between 95–100 percent of its minimum required locations, subject to the requirement to refund support based on the number of unserved locations as the end of the 10-year support term. Accordingly, the Commission establishes a similar metric for refunding support calculated specifically for Alaska. The average support for the top five percent of ACS high-cost locations is 8.2 times the average for all of ACS' funded high-cost locations. The Commission does not divide that figure in half, as this is an Alaska-specific and carrier-specific number. Therefore, should ACS fail to build to 100 percent of its required minimum locations at the end of its support term, the Commission will require ACS to refund a support amount based on the number of locations left unserved times $51,152—the average per-location Phase II frozen support ACS receives multiplied by 8.2.

42. The Commission requires ACS to comply with our existing high-cost reporting and oversight mechanisms, unless otherwise modified as described below. In the *April 2014 Connect America FNPRM,* the Commission sought comment on how to monitor and enforce compliance by non-contiguous carriers receiving frozen support once the Commission determined their specific service obligations. The Commission asked about measures that must be in place to ensure that it has the ability to monitor compliance with these service obligations. The Commission asked whether there were considerations specific to non-contiguous areas that it should account for when determining whether these carriers have complied with their service obligations.

43. *Annual Reporting Requirements.* Pursuant to section 54.313 of the Commission's rules, ACS must continue to file its FCC Form 481 on July 1 each year. ACS supports monitoring and enforcement measures and did not request accommodations with regard to compliance standards. Further, consistent with the relief granted to other price cap carriers in the *2016 Rate-of-Return Reform Order,* 79 FR 24282, April 25, 2016, the Commission also eliminates the requirement that ACS file the five-year service quality improvement plan and annual updates, as it instead will be filing annual progress updates throughout the term. The Commission also adopts the same reporting obligation for ACS as required of the model-based price cap carriers to report the total amount of Connect America Phase II support, if any, it used for capital expenditures in the previous calendar year.

44. *Location Reporting Requirements.* In the *December 2014 Connect America Order,* the Commission required all price cap carriers accepting model-based support to include in their annual reports a list of the geocoded locations to which they have newly deployed facilities using Connect America support in the prior year. The Commission also required those companies to report with their first list (*i.e.* the one due on July 1, 2016) geocoded locations where the carrier already was offering service meeting the

Commission's requirements. The list must identify which locations are located in a Phase II-funded block and which locations are located in extremely high-cost census blocks. In the *2016 Rate-of-Return Reform Order,* the Commission updated the Phase II location reporting obligations—moving this data collection out of the annual report and revising deadlines for submission. Specifically, instead of reporting geocoded location information in the annual report, due July 1 for the prior calendar year, the Commission concluded that it will serve the public interest for price cap carriers to report on deployment by March 1 every year with respect to the prior calendar year, rather than six months later. The Commission also required all rate-of-return ETCs to report annually to the Commission on the number of geocoded locations where they are offering 4/1 Mbps, 10/1 Mbps or 25/3 Mbps. The Commission directed the Bureau to work with USAC to develop an online portal that will enable all carriers to submit their geocoded information on a rolling basis throughout the year. Further, the Commission decided that price cap carriers will continue to make annual certifications that they are meeting their public interest obligations, but will do so when submitting the information to USAC by this deadline, rather than in their annual reports.

45. Additionally, price cap ETCs' geolocation data and associated deployment certifications no longer be are provided pursuant to the deadlines specified in section 54.313. The penalties in section 54.313(j) for failure to timely file that information do not apply absent additional conforming modifications to our rules. Therefore, as is the case for rate-of-return ETCs, the penalties for price cap ETCs to fail to timely file geolocation data and associated deployment certifications are located in new section 54.316(c).

46. The Commission adopts similar reporting obligations for ACS as a recipient of Phase II frozen high-cost support. ACS will be required to submit the requisite information to USAC no later than March 1 of each year, for locations where they offered service in the prior year. Similar to the rate-of-return carriers, ACS will be required to separately identify the number of locations where it is offering speeds of at least 10/1 Mbps or 25/3 Mbps. While ACS's deployment obligation is to offer at least 10/1 Mbps broadband to the requisite number of locations, depending on network design, some of those locations may receive better than 10/1 Mbps service, and the Commission sees value in tracking progress at the higher speed tier as well. As with other carriers subject to obligations to report their progress in broadband deployment, ACS is encouraged to submit information on a rolling basis throughout the year, as soon as service is offered, to avoid filing all of its locations at the deadline.

47. *Reductions in Support.* Today, the Commission adopts specific defined deployment milestones for ACS. Based on the record before us, the Commission finds no reason to relax our compliance standards for ACS as a non-contiguous carrier electing frozen support. The table below summarizes the regime previously adopted by the Commission for non-compliance with defined deployment milestones.

NON-COMPLIANCE MEASURES

Compliance gap	Non-Compliance measure
5% to less than 15%	Quarterly reporting.
15% to less than 25%	Quarterly reporting + withhold 15% of monthly support.
25% to less than 50%	Quarterly reporting + withhold 25% of monthly support.
50% or more	Quarterly reporting + withhold 50% of monthly support for six months; after six months withhold 100% of monthly support and recover percentage of support equal to compliance gap plus 10% of support disbursed to date.

48. *Appropriate Uses of Support.* The Commission clarifies, at ACS's request, that ACS may use Phase II frozen support for middle mile costs and reasonable operation expenses, so long as it otherwise meets the obligations to offer service meeting the requirements of this Order to 31,571 locations. Recipients of model-determined support are free to use such support to defray the cost of middle mile transport necessary to deliver broadband service meeting the Commission's requirements to end-user customers. The Commission sees no reason to treat ACS differently because it is receiving Phase II frozen support as opposed to Phase II support calculated by the cost model.

49. The Commission also finds that ACS's Phase II frozen support is sufficient to carry out its deployment obligations as well as maintain existing voice service in the high-cost and extremely high-cost census blocks in its territory, and the Commission clarifies that ACS may use its support for either such purpose.

III. Procedural Matters

50. This Order contains a modified information collection, which 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 will be invited to comment on the new information collection requirement contained in this Order. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Supplemental Final Regulatory Flexibility Analysis (FRFA) below, *infra.*

51. The Commission previously sent a copy of the *December 2014 Connect America Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act and will supplement this filing with a copy of this Order.

52. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* adopted in November 2011 (*USF/ICC Transformation FNPRM*) and the *Further Notice of Proposed Rulemaking* adopted in April 2014 (*April 2014 Connect America FNPRM*) in this proceeding. The Commission included a Final Regulatory Flexibility Analysis (FRFA) in Appendix B of the *December 2014 Connect America Order.* This Supplemental Final Regulatory Flexibility Analysis (Supplemental

FRFA) supplements the FRFA to reflect the actions taken in this Order and conforms to the RFA.

53. In this Order, the Commission adopts tailored public service obligations for Alaska Communications Systems (ACS), a price-cap carrier serving Alaska, to support the deployment of voice and broadband-capable networks in Alaska.

54. In the *USF/ICC Transformation Order,* the Commission recognized that price cap carriers serving specific non-contiguous areas of the United States, including Alaska, face difference operating conditions and challenges from those faced by carriers in the contiguous 48 states. In April 2014, the Commission proposed to establish the same service obligations but sought comment the flexibility required for non-contiguous carriers to meet the standards. In December 2014, the Commission concluded tailored service obligations for each non-contiguous carrier was the best approach.

55. In this Order, the Commission adopts targeted changes to the price cap model-based support public service obligations to accommodate the unique circumstances of ACS service in Alaska. Specifically, the Commission makes an adjustment to the term of support, establish a minimum number of locations where service must be offered, establish a planning phase deadline, adopt revised interim deployment milestones, and allow a limited number of location substitutions—allowing ACS to use its support to provide service in locations that are in partially-served census blocks and ''high-cost'' locations in ''low-cost'' census blocks. The Commission establishes a challenge process for determining the substitute locations in partially-served census blocks, and amend the location certification requirement to effectively monitor substitutions in ''low-cost'' census blocks. The Commission also forbears from the federal high-cost universal service obligation of ACS to offer voice service in low-cost areas where it does not receive high-cost support, in areas served by an unsubsidized competitor, and in areas where ACS is replaced by another eligible telecommunications carrier (ETC).

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

57. As noted above, a FRFA was incorporated into the *December 2014 Connect America Order.* In that analysis, the Commission described in detail the small entities that might be significantly affected by the rules adopted in the *Order.* Those entities may be found in a number of services including, *e.g.:* wired telecommunications carriers, local exchange carriers, incumbent local exchange carriers, competitive local exchange carriers, interexchange carriers, local resellers, toll resellers, wireless telecommunications carriers, broadband personal communications service, advanced wireless services, satellite telecommunications, cable companies and systems, cable system operators, internet service providers, and all other information services. In this Order, the Commission hereby incorporates by reference the descriptions and estimates of the number of small entities from the previous FRFA in this proceeding.

58. The rule changes in this Order will affect one entity, Alaska Communications Systems, which fits the descriptions of entities outlined in the FRFA.

59. The data, information and document collection required by the *December 2014 Connect America Order* as described in the previous FRFA in this proceeding is hereby incorporated by reference. The actions taken in this Order amend the collection by altering the reporting milestones, adding one reporting requirement, and adding one certification requirement.

60. In this Order, the Commission amends the reporting requirements by requiring ACS to file a report at the conclusion of its planning phase, and no later than October 1, 2018. This report will provide the Commission with a list of the proposed locations to which ACS intends to offer service over the 10-year support term.

61. In this Order, the Commission amends the interim milestones reports to accommodate the extended term. ACS will be provided support for a 10-year term and will be required to offer voice and broadband service meeting certain latency, data usage, speed and reasonably comparable rate obligations to a certain number of locations. Accordingly, ACS will be required to report that it has built 30 percent of all locations by the end of 2018, 40 percent by the end of 2019, 50 percent by the end of 2020, 60 percent by the end of 2021, 70 percent by the end of 2022, 80 percent by the end of 2023, 90 percent by the end of 2024, and all locations by the end of 2025. Should ACS fail to meet these milestones, it will be subject to certain non-compliance measures, including support reductions and reporting.

62. Lastly, in this Order, the Commission amends the collection to include a new cost certification requirement. In that certification, ACS must certify that the capital investment cost incurred to newly extend service to a location in a ''low-cost'' census block is at least $5,000. ACS may be required to maintain documentation regarding this certification. The Commission concludes that requiring this certification will ensure that the Commission can monitor compliance with the section 254(b) principle that ''[c]onsumers in all regions of the Nation . . . including . . . those in . . . high cost areas, should have access to telecommunications and information services . . .''

63. The analysis of the Commission's efforts to minimize the possible significant economic impact on small entities as described in the previous FRFA in this proceeding is hereby incorporated by reference. It is unchanged by this Order, save the addition of the reporting and certification obligations described above. This increased burden is outweighed by the importance of monitoring the use of the public's funds and ensuring support is used for its intended purpose.

64. The Commission notes that the reporting and certification requirements it adopts for ACS are tailored to its unique circumstance. Additionally, the information that the Commission is requiring ACS report and certify is information it expects the company will already be tracking to ensure its system is built economically and effectively.

65. *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).

IV. Ordering Clauses

66. *Accordingly, it is ordered,* pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 160, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.427,

and 1.429, that this Order, Is Adopted, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for the certification in paragraph 33, which contains information collections subject to PRA review and Shall Become Effective immediately upon announcement in the **Federal Register** of OMB approval.

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–28114 Filed 11–21–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 376

Lease and Interchange of Vehicles by Mexico-Domiciled Motor Carriers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice on applicability.

SUMMARY: Section 219(d) of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) restricted Mexico-domiciled motor carriers from leasing commercial motor vehicles (CMVs) to U.S. carriers to transport property into the United States until the international obligations under the North American Free Trade Agreement (NAFTA) chapter on cross-border trade in services were met. Given FMCSA's acceptance of applications for long-haul operating authority from Mexico-domiciled motor carriers following the conclusion of the U.S.-Mexico Cross Border Long-Haul Trucking Pilot Program, the obligations are fulfilled and the restriction is no longer applicable.

DATES: Effective November 22, 2016.

FOR FURTHER INFORMATION CONTACT: Bryan Price, Chief, North American Borders Division, FMCSA, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone (202) 366–2995; email *bryan.price@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Motor Carrier Safety Improvement Act of 1999 [1] (MCSIA) created FMCSA and transferred authority for motor carrier safety from the Federal Highway Administration.

Section 219(d) prohibited the leasing by a Mexico-domiciled motor carrier (lessor) of its equipment to a U.S. motor carrier (lessee) for operation beyond the commercial zones on the U.S.-Mexico border. This restriction specifically applied ''Before the implementation of the land transportation provisions of NAFTA . . .'' The second clause in section 219(d) further states that this prohibition exists ''during any period in which a suspension, condition, restriction or limitation imposed under section 13902(c) of title 49 . . . applies to a [long-haul] motor carrier (as defined in section 13902(e)).'' Section 13902(c) addresses ''Restrictions on motor carriers domiciled in or owned or controlled by nationals of a contiguous foreign country.''

Section 13902(c)(3) provides that only ''The President'' or his delegate may ''remove or modify in whole or in part any action taken under paragraph (1)(A) if the President or such delegate determines that such removal or modification is consistent with the obligations of the United States under a trade agreement or with United States transportation policy.'' In November 2002, President Bush issued a presidential memorandum lifting the moratorium on granting long-haul operating authority to qualified Mexico-domiciled motor carriers of property and of passengers.[2] The only limitation that remained following this presidential action was the restriction on point-to-point transportation within the United States, which did not impact the NAFTA land transportation provisions.

In March 2002, FMCSA issued Interim Final Rules that fulfilled a Congressional mandate to ensure the safe operation of Mexican vehicles in the United States. Several organizations filed suit in the U.S. Court of Appeals for the Ninth Circuit challenging those rules. The Court set aside the rules, and the United States sought Supreme Court review of the decision. In 2004, the Supreme Court reversed the Ninth Circuit and upheld the Agency's Interim Final Rules (*Department of Transportation, et al.* v. *Public Citizen, et al.,* 541 U.S. 752 (2004)).

Congress, however, subsequently passed Section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007,[3] imposing further limitations on the Agency's ability to expend appropriated funds to issue operating authority to Mexico-domiciled motor carriers. The Agency was unable to process applications for long-haul operating authority from Mexico-domiciled motor carriers until a pilot program was completed pursuant to these new requirements.

From October 14, 2011, through October 10, 2014, FMCSA conducted a pilot program to determine the ability of Mexican motor carriers to operate safely in the United States. FMCSA delivered the requisite report to Congress in January, 2015. On January 15, 2015 (80 FR 2179), FMCSA announced that it would begin accepting and processing applications for long-haul operating authority from Mexico-domiciled property carriers under 49 U.S.C. 13902.

Because Mexico-domiciled motor carriers may now apply for and receive long-haul operating authority, the land transportation provisions of NAFTA for property carriers have been implemented. Therefore, the previous leasing restrictions are not applicable, consistent with Section 219(d) of MCSIA.

This notice is being issued to prevent inconsistent enforcement of a law that is no longer applicable. It also serves to inform all motor carriers and the general public that, in accordance with NAFTA and MCSIA, Mexican-domiciled motor carriers (lessors) are allowed to lease their equipment to U.S. motor carriers (lessees) regardless of the destination of the cargo, as long as the carriers meet the requirements of 49 CFR part 376. Included in part 376 are requirements that the ''authorized carrier'' (in this case, the U.S. motor carrier) assume ''complete responsibility for the operation of the equipment for the duration of the lease'' [49 CFR 376.12(c)]. These types of leasing arrangements are compliant with MCSIA and the Agency's regulations.

Issued on: November 9, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–28018 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–EX–P

[1] Public Law 106–159, 113 Stat. 1748, 1768, December 9, 1999.

[2] 67 FR 71795 (November 27, 2002).

[3] Public Law 110–28, 121 Stat. 112, 183, (May 25, 2007).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151130999–6225–01]

RIN 0648–XF035

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

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

ACTION: Temporary rule; approval of quota transfer.

SUMMARY: NMFS announces its approval of a transfer of 2016 commercial bluefish quota from the State of Maine to the State of Rhode Island. The approval of the transfer complies with the Atlantic Bluefish Fishery Management Plan quota transfer provision. This announcement also informs the public of the revised commercial quotas for Maine and Rhode Island.

DATES: Effective November 21, 2016, through December 31, 2016.

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

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.162.

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan was published in the **Federal Register** on July 26, 2000 (65 FR 45844), and provided a mechanism for transferring bluefish quota 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 request approval of a transfer of bluefish commercial quota under § 648.162(e)(1)(i) through (iii). The Regional Administrator must first approve any such transfer based on the criteria in § 648.162(e).

Maine and Rhode Island have requested the transfer of 32,000 pounds (lb) (14,515 kilogram (kg)) of bluefish commercial quota from Maine to Rhode Island. Both states have certified that the transfer meets all pertinent state requirements. This quota transfer was requested by Rhode Island to ensure that its 2016 quota would not be exceeded. The Regional Administrator has approved this quota transfer based on his determination that the criteria set forth in § 648.162(e)(1)(i) through (iii) have been met. The revised bluefish quotas for calendar year 2016 are: Maine, 655 lb (297 kg); and Rhode Island, 464,561 lb (210,721 kg). These quota adjustments revise the quotas specified in the final rule implementing the 2016–2018 Atlantic Bluefish Specifications published on August 4, 2016 (81 FR 51370), and reflect all subsequent commercial bluefish quota transfers completed to date. For information of previous transfers for fishing year 2016 visit: *http://go.usa.gov/xZT8H.*

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: November 17, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–28089 Filed 11–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 151023986–6763–02]

RIN 0648–XE284

Pacific Island Pelagic Fisheries; 2016 Commonwealth of the Northern Mariana Islands Bigeye Tuna Fishery; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the U.S. pelagic longline fishery for bigeye tuna in the western and central Pacific Ocean because the fishery will reach the 2016 allocation limit for the Commonwealth of the Northern Mariana Islands (CNMI). This action is necessary to comply with regulations managing this fish stock.

DATES: Effective 12:01 a.m. local time December 1, 2016, through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Ariel Jacobs, NMFS PIRO Sustainable Fisheries, 808–725–5182.

SUPPLEMENTARY INFORMATION: On July 22, 2016, NMFS restricted the retention, transshipment and landing of bigeye tuna captured by longline gear in the western and central Pacific Ocean (WCPO) because the U.S. longline fishery reached 2016 U.S. bigeye tuna limit of 3,554 mt (81 FR 45982, July 15, 2016). Regulations at 50 CFR 300.224(d) provide an exception to this closure for bigeye tuna caught by U.S. longline vessels identified in a valid specified fishing agreement under 50 CFR 665.819(c). Further, 50 CFR 665.819(c)(9) authorized NMFS to attribute catches of bigeye tuna made by U.S. longline vessels identified in a valid specified fishing agreement to the U.S. territory to which the agreement applies.

Effective on September 9, 2016, NMFS specified a 2016 catch limit of 2,000 mt of longline-caught bigeye tuna for the U.S. territories of American Samoa, Guam and the Commonwealth of the Northern Mariana Islands or CNMI (81 FR 63145, September 14, 2016). NMFS also authorized each territory to allocate up to 1,000 mt of its 2,000 mt bigeye tuna limit to U.S. longline fishing vessels permitted to fish under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP).

On September 9, 2016, the Western Pacific Fishery Management Council, through its Executive Director, transmitted to NMFS a specified fishing agreement between the CNMI and Quota Management, Inc. (QMI) dated April 14, 2016. NMFS reviewed the agreement and determined that it was consistent with the requirements at 50 CFR 665.819, the FEP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws (81 FR 64356, September 20, 2016). The criteria that a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, followed the procedures in 50 CFR 665.819—Territorial catch and fishing effort limits.

In accordance with 50 CFR 300.224(d) and 50 CFR 665.819(c)(9), NMFS began attributing bigeye tuna caught in the WCPO by vessels identified in the CNMI/QMI agreement to the CNMI, beginning on September 9, 2016. NMFS monitored catches of longline-caught bigeye tuna by the CNMI longline fisheries, including catches made by U.S. longline vessels operating under the CNMI/QMI agreement. Based on this monitoring, NMFS forecasted that the

CNMI territorial allocation limit of 1,000 mt will be reached by December 1, 2016, and is, as an accountability measure, prohibiting the catch and retention of longline-caught bigeye tuna by vessels in the CNMI/QMI agreement.

Notice of Closure and Temporary Rule

Effective 12:01 a.m. local time December 1, 2016, through December 31, 2016, NMFS closes the U.S. pelagic longline fishery for bigeye tuna in the western and central Pacific Ocean as a result of the fishery reaching the 2016 allocation limit of 1,000 mt for the CNMI.

During the closure, a U.S. fishing vessel operating under the CNMI/QMI agreement may not retain on board, transship, or land bigeye tuna captured by longline gear in the WCPO, except that any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions may be retained on board, transshipped, and landed, provided that they are landed within 14 days of the start of the closure; that is, by December 15, 2016. Additionally, U.S. fishing vessels operating under the CNMI/QMI agreement are also prohibited from transshipping bigeye tuna caught in the WCPO by longline gear to any vessel other than a U.S. fishing vessel with a valid permit issued under 50 CFR 660.707 or 665.801.

During the closure, all other restrictions and requirements NMFS established on July 22, 2016, as a result of the U.S. longline fishery reaching the 2016 U.S. bigeye tuna limit of 3,554 mt (81 FR 45982, July 15, 2016) shall remain valid and effective.

If, prior to December 1, 2016, NMFS receives a valid specified fishing agreement between a U.S. longline fishing vessel(s) and another U.S. territory, any vessel included in the CNMI/QMI agreement that is also included in the subsequent agreement may continue to transship, retain, and land bigeye tuna caught by longline gear in the WCPO. Additionally, if any such vessel is engaged in a longline fishing trip in the WCPO on December 1, 2016, that vessel would not need to return to port before December 15, 2016. NMFS would announce any valid specified fishing agreement in the **Federal Register**.

Classification

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this action, because it would be impracticable and contrary to public interest, as discussed below. This rule closes the U.S. longline fishery for bigeye tuna in the WCPO as a result of reaching the bigeye tuna allocation limit established by the 2016 specification for catch and allocation limits of bigeye tuna for the CNMI, and the specified fishing agreement between the Government of the CNMI and QMI dated April 14, 2016.

NMFS forecasted that the fishery would reach the 2016 CNMI allocation limit by December 1, 2016. Fishermen have been subject to longline bigeye tuna limits in the western and central Pacific since 2009. They have received ongoing, updated information about the 2016 catch and progress of the fishery in reaching the U.S. bigeye tuna limit via the NMFS Web site, social media, and other means. The publication timing of this rule, moreover, provides longline fishermen with seven days' advance notice of the closure date, and allows two weeks to return to port and land their catch of bigeye tuna. This action is intended to comply with regulations managing this stock, and, accordingly NMFS finds it impracticable and contrary to the public interest to have prior notice and public comment.

For the reasons stated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this temporary rule. NMFS must close the fishery to ensure that fishery does not exceed the allocation limit. NMFS implemented the catch and allocation limits for the CNMI consistent with management objectives to sustainable manage the bigeye tuna stock and restore the stock to levels capable of producing maximum sustainable yield on a continuing basis. Failure to close the fishery before the limit is reached would be inconsistent with bigeye tuna management objections and in violation of Federal law.

This action is required by 50 CFR 665.819(d), and is exempt from review under Executive Order 12866.

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

Dated: November 17, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–28061 Filed 11–17–16; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XE958

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2016 Gulf of Alaska Pollock Seasonal Apportionments

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS is adjusting the 2016 D seasonal apportionments of the total allowable catch (TAC) for pollock in the Gulf of Alaska (GOA) by re-apportioning unharvested pollock TAC in Statistical Areas 610, 620, and 630 of the GOA. This action is necessary to provide opportunity for harvest of the 2016 pollock TAC, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), November 17, 2016, until 2400 hours A.l.t., December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 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 (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The annual pollock TACs in Statistical Areas 610, 620, and 630 of the GOA are apportioned among four seasons, in accordance with § 679.23(d)(2). Regulations at § 679.20(a)(5)(iv)(B) allow the underharvest of a seasonal apportionment to be added to subsequent seasonal apportionments, provided that any revised seasonal apportionment does not exceed 20 percent of the seasonal apportionment for a given statistical area. Therefore, NMFS is increasing the D season

apportionment of pollock in Statistical Areas 620 and 630 of the GOA to reflect the underharvest of pollock in those areas during the B season. In addition, any underharvest remaining beyond 20 percent of the originally specified seasonal apportionment in a particular area may be further apportioned to other statistical areas. Therefore, NMFS also is increasing the D season apportionment of pollock to Statistical Areas 610 and 630 based on the underharvest of pollock in Statistical Areas 620 of the GOA. These adjustments are described below.

The D seasonal apportionment of the 2016 pollock TAC in Statistical Area 610 of the GOA is 24,421 metric tons (mt) as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the D season apportionment for Statistical Area 610 by 3,508 mt to account for both the Statistical Area 610 C season overharvest of 1,376 mt and the Statistical Areas 620 C season TAC underharvest. This increase is in proportion to the estimated pollock biomass and is not greater than 20 percent of the D seasonal apportionment of the TAC in Statistical Area 610. Therefore, the revised D seasonal apportionment of the pollock TAC in Statistical Area 610 is 27,929 mt (24,421 mt plus 3,508 mt).

The D seasonal apportionment of the pollock TAC in Statistical Area 620 of the GOA is 15,402 mt as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016). In accordance with § 679.20(a)(5)(iv)(B), the Regional Administrator hereby increases the D seasonal apportionment for Statistical Area 620 by 3,080 mt to account for the underharvest of the TAC in Statistical Areas 620 in the C season. This increase is not greater than 20 percent of the D seasonal apportionment of the TAC in Statistical Area 620. Therefore, the revised D seasonal apportionment of the pollock TAC in Statistical Area 620 is 18,482 mt (15,402 mt plus 3,080 mt).

The D seasonal apportionment of pollock TAC in Statistical Area 630 of the GOA is 19,822 mt as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016). In accordance with § 679.20(a)(5)(iv)(B), the Regional Administrator hereby increases the D seasonal apportionment for Statistical Area 630 by 3,964 mt to account for the underharvest of the TAC in Statistical Areas 620 and 630 in the C season. This increase is in proportion to the estimated pollock biomass and is not greater than 20 percent of the D seasonal apportionment of the TAC in Statistical Area 630. Therefore, the revised D seasonal apportionment of pollock TAC in Statistical Area 630 is 23,786 mt (19,822 mt plus 3,964 mt).

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 provide opportunity to harvest increased pollock seasonal apportionments. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 16, 2016.

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: November 16, 2016.

Emily H. Menashes,

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

[FR Doc. 2016–28056 Filed 11–17–16; 11:15 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 225
Tuesday, November 22, 2016

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 131

RIN 3245–AG02

Office of Women's Business Ownership: Women's Business Center Program

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Small Business Administration (SBA) is seeking comments on this Notice of Proposed Rulemaking (NPRM) regarding the Women's Business Center (WBC) Program. An Advance Notice of Proposed Rulemaking (ANPRM) was published on April 22, 2015, which received eight comments. This NPRM is being issued to continue the consultative process with stakeholders to examine the proposed WBC regulations. This NPRM also proposes to codify policy and procedural changes that have been included in the Notice of Award, such as language on risk determination as required by, limitations on carryovers, who is considered key personnel and a reduction in the reporting requirements. Implementing these regulations will result in standardization and transparency to the delivery of the WBC Program.

DATES: Comments must be received on or before January 23, 2017.

ADDRESSES: You may submit comments, identified by RIN 3245–AG02, by one of the following methods:

(1) *Federal Rulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments;

(2) *Mail/Hand Delivery/Courier:* U.S. Small Business Administration, Attn: Bruce Purdy, Deputy Assistant Administrator for the Office of Women's Business Ownership (DAA/OWBO), 409 3rd Street SW., Washington, DC 20416;

(3) *Facsimile:* (202) 481–0554; or

(4) *Email: owbo@sba.gov.*

The SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to the U.S. Small Business Administration, Attn: Bruce Purdy, Deputy Assistant Administrator for the Office of Women's Business Ownership (DAA/OWBO), 409 3rd Street SW., Washington, DC 20416, or via facsimile to (202) 481–0554, or submit them via email to *owbo@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe the SBA should hold this information as confidential. The SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Sheila Williams, Lead Program Analyst, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, telephone number (202) 205–7285 or *Sheila.Williams@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory

The Women's Business Center (WBC) Program was created under the authority of Title II of the Women's Business Ownership Act of 1988 (Pub. L. 100–533). The WBC Program authority is now codified in section 29 of the Small Business Act (the Act), 15 U.S.C. 656. The initial Demonstration Training Program, later renamed the WBC Program, was created with the congressional intent to remove barriers to the creation and development of small businesses owned and controlled by women and to stimulate the economy by aiding and encouraging the growth and development of such businesses. The specific objectives of the Demonstration Training Program were to provide long-term Training and Counseling to potential and current women business owners, including those who are Socially and Economically Disadvantaged as defined in 13 CFR 124.103 and 124.104.

Since its creation, the Women's Business Center Program has changed through a number of public laws that have turned the WBC Program from a Demonstration Training Program into a permanent program. The laws that have impacted the WBC Program include: The Women's Business Development Act of 1991 (Pub. L. 102–191); The Women's Business Centers Sustainability Act of 1999 (Pub. L. 106–165): U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (Pub. L. 110–28); and, The Small Business Jobs Act of 2010 (Pub. L. 111–240).

Section 29 of the Act, 15 U.S.C. 656, authorizes the SBA to provide financial assistance to private nonprofit organizations to conduct 5-year projects for the benefit of small business concerns owned and controlled by women. The Act further authorizes SBA to renew a grant for additional 3-year periods and provides that there are no limitations on the number of times a grant may be renewed.

B. History

On April 22, 2015, the SBA published an Advance Notice of Proposed Rulemaking (ANPRM) soliciting comments on the interpretations of statutory language, including ''distinct population that would otherwise not be served,'' ''whose services are targeted to women'' and ''full-time program director or program manager to manage the program'' (80 FR 22434). The SBA also requested comments on how to define what is acceptable for activities that fall under ''in-kind,'' what guidelines grantees should use in determining reasonable costs associated with in-kind activities, acceptable guidelines for documenting in-kind match, selection criteria used in deciding whether to award an initial WBC grant, guidelines SBA should use in evaluating ''the experience of the Applicant Organization'' and ''the proposed location for the women's business center,'' and what an appropriate ''minimum amount of time'' would be to commence operating as a women's business center following receipt of an award. Comments from the ANPRM have been considered in the drafting of these proposed regulations.

Currently, there are over 100 nonprofit entities that participate in the WBC Program and provide services as described in the Act. These participants are known as SBA Women's Business Centers (WBCs) and receive annual Federal funding limited by the authority of the Act and subject to the appropriations of Congress and the nonprofit's ability to provide the required Matching Funds.

Through its authority, the SBA's Office of Women's Business Ownership

oversees the WBC Program and the portfolio of WBCs that participate in the WBC Program. Since 1988, the number of participating WBCs has grown along with the number of women entrepreneurs assisted by these centers. The SBA has managed the performance and compliance of the WBCs through Cooperative Agreements with each individual nonprofit entity that hosts a WBC project, through regular reporting and programmatic and financial examinations of each WBC.

II. Proposal

The proposed rule would incorporate the SBA's oversight of the WBC Program into regulations in a new Part 131 of the SBA's regulations by: (A) Creating standard definitions for the program (13 CFR 131.110); (B) incorporating program-participation requirements and application procedures (13 CFR 131.300, 13 CFR 131.400); (C) incorporating financial-management and grant-administration requirements (13 CFR 131.500); (D) incorporating reporting requirements (13 CFR 131.600); (E) incorporating oversight and programmatic and financial-examination provisions (13 CFR 131.700 and 13 CFR 131.720); (F) incorporating procedures for Dispute resolution (13 CFR 131.840), and suspension, termination and non-renewal of a grant (13 CFR 131.830); and G) privacy requirements (13 CFR 131.900).

III. Section-by-Section Analysis

131.100 Introduction

The WBC Program was created under the authority of Title II of the Women's Business Ownership Act of 1988 (Pub. L. 100–533) to remove barriers to the creation and development of small businesses owned and controlled by women and to stimulate the economy by aiding and encouraging the growth and development of such businesses. Since its creation, the WBC Program has changed through a number of public laws that have turned the WBC Program from a Demonstration Training Program into a permanent program. The WBC Program has grown and evolved to provide a variety of services to many entrepreneurs, ranging from those interested in starting businesses to those looking to expand existing businesses.

Over the last several years, the SBA has incorporated processes to monitor the WBC Program, including conducting financial examinations required by statute. The SBA proposes to implement this rule to incorporate its oversight of the WBC Program into regulations to ensure consistency in application and provide transparency for applicants and participants.

131.110 Definitions

This section defines 57 words and phrases used in the management and oversight of the WBC Program. These definitions have been consolidated from existing documents, including Program Announcements and Cooperative Agreements, to ensure consistency and clarity within the WBC Program.

Through the ANPRM, commenters raised concerns on whether Distinct Populations were limited to Socially and Economically Disadvantaged populations. Under this proposed rule, definitions are provided for Distinct Population and Socially and Disadvantaged populations. Under the statute, 15 U.S.C. 656, a representative portion of clients should be Socially and or Economically Disadvantaged women. However, WBCs are expected to serve all women entrepreneurs and not just those that are Socially and Economically Disadvantaged.

131.200 Eligible Entities

This proposed section codifies the types of organizations that are eligible by statute to participate in the WBC Program and those organizations that are prohibited from participating in the program. Section 29 of the Act, 15 U.S.C. 656, identifies eligible entities as private nonprofit organizations that are described in section 501(c) of title 26 and exempt from taxation under section 501(a) of that title.

131.300 Women's Business Centers (WBCs)

This section describes how SBA proposes to provide financial assistance to private nonprofit organizations to conduct projects for the benefit of small business concerns owned and controlled by women, as authorized in 15 U.S.C. 656. In addition, under 15 U.S.C. 656(5), the SBA may renew a grant for an additional 3-year period, if the nonprofit organization submits an Application for such renewal at such time, in such manner, and accompanied by such information as the SBA establishes. This section describes the SBA's proposed process for renewal applicants to continue in the WBC Program.

131.310 Operating Requirements

This proposed section codifies the statutory requirement at 15 U.S.C. 656, on the process by which the SBA must issue Notices of Award, which outline the terms and conditions of the awards to the WBC Recipient Organizations. To ensure that the Recipient Organization maintains clear and separate functions from the WBC, as stated in the Cooperative Agreement, this rule proposes to require that the Recipient Organization manage the WBC Program as a separate entity within its organization, consistent with 2 CFR part 303, Internal Controls.

Historically, Women's Business Centers that have established partnerships in the community in conjunction with an advisory board have had less difficulty working within the community and meeting the match requirements of the program. This section proposes to require that each WBC establish an advisory board that will confer with and provide recommendations to the WBC Program Director on matters pertaining to the operation of the WBC and assist the WBC in raising Matching Funds.

This section also provides a proposed description of WBC facilities and administrative infrastructure requirements, including the requirement that the facility comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). These requirements serve to ensure that the WBC has the capacity to deliver the Counseling (including space to provide one-to-one Counseling that will ensure client privacy), Training and other services outlined in its statement of work.

In the past, the SBA has found that some WBCs do not clearly reference that they are Women's Business Centers, with an emphasis on providing services to prospective or existing women entrepreneurs. Therefore, the SBA is proposing that any new WBC accepted into the WBC Program after the effective date of the rule be required to include the specific identification ''WBC'' as part of its official name. The SBA is further proposing that all other WBCs prominently include on their Web sites and promotional documents that the ''Women's Business Center is funded in part by the U.S. Small Business Administration''. This transparency would ensure that WBCs are clearly discernable and are easily recognized by women attempting to contact organizations for business services focused on women.

Historically, WBCs with insufficient staff have been identified as more likely to face difficulties in providing services at an adequate level as outlined in their statements of work. The SBA also has concerns related to the inability for a WBC to grow or expand services when the WBC is not properly staffed. To ensure maximum productivity of a WBC, this rule proposes to require that

the WBC include at least a Full-time WBC Program Director and at least one other staff person, preferably a business counselor.

131.320 Area of Service

This section proposes to require WBCs to identify their geographic service area(s) as part of the application process. Currently, many WBCs do not clearly define their proposed geographic service areas; rather, they indicate that services will be provided for an entire state. Historically, this has caused some confusion, as some WBCs include service areas where an existing SBA-funded WBC is already providing services. This is especially true in states where there is more than one WBC and more than one Recipient Organization. Under this proposed rule, SBA plans to define, in writing, the geographic area for each Recipient Organization funded under the WBC Program. WBCs would also be required to submit a written request to change a geographic service area so as to ensure that no two WBCs are awarded WBC Project Funds to provide services in the same area while some areas remain underserved. To that end, this rule proposes that Applicant Organizations submitting new WBC projects within proximity of an existing WBC include a justification of need, including a discussion of the population density, submitted in its proposal. The SBA is seeking comment on how to best define proximity.

131.330 WBC Services and Restrictions on Services

This proposed section lists the required services that Women's Business Centers must provide to participate in the WBC Program. Consistent with the statute, 15 U.S.C. 656, the Office of Women's Business Ownership requires in its program announcement(s) that Women's Business Centers provide Training and Counseling services to women, as well as services that will assist their businesses in securing business credit and investment capital. In accordance with this requirement, WBCs assist women business owners in identifying available funds from lenders, the SBA and other resources. These resources include collaboration with state, local and federal government agencies and assisting its clients pursue designation as women-owned, small businesses. This section also names the proposed services that a WBC can provide to assist a women business owner access capital. To assist with delivery of its access to capital services, the WBCs rely on programs provided by other agencies. These programs include, but are not limited to, use of the FDIC Smart Money Curriculum, Census Bureau data tools, and the SBA's Microloan Program. Further, many of the WBC host organizations are microlenders and work with other lenders in the community.

Historically, (see links below) men have started their businesses with significantly more capital than women, and women's access to capital remains an obstacle to women growing their businesses. This has been included in reports by the U.S. Department of Commerce and the National Women's Business Council included here. *http://www.esa.doc.gov/sites/default/files/women-owned-businesses.pdf*.

https://www.sba.gov/sites/default/files/files/Gender%20Differences%20in%20Startup%20Financings.pdf. OWBO will monitor the WBCs support of capital access services through the review of WBC reporting, as described in Section 131.600 of this proposed rule. Under 15 U.S.C. 656 (B)(1), the SBA is authorized to provide financial assistance to private nonprofit organizations to conduct projects for the benefit of small-business concerns owned and controlled by women. The services provided under these projects can include Training and Counseling on how to apply for and secure business credit and investment capital, preparing and presenting financial statements, and managing cash flow and other financial operations of a business concern. Given this authorization, this rule proposes to require WBCs to provide specific services related to access to capital for women entrepreneurs as authorized in 15 U.S.C. 656. The SBA further proposes to provide guidance concerning the provision of access to capital services in this section.

Given the SBA's involvement in disaster-relief assistance and the WBCs' participation in addressing the business needs in communities impacted by catastrophes, the SBA is also proposing to include a section on Specialized Services.

131.340 Specific WBC Program Responsibilities

This proposed section outlines the role of the Assistant Administrator/OWBO, as defined in 15 U.S.C. 656. This rule also proposes to explicitly define the roles of the WBC Program Director and Principal Investigator of the Recipient Organization. Additionally, under this proposed rule, the SBA clearly defines the tasks and responsibilities for the WBC Program Director, as the Full-time Key Employee for the WBC, as those completed solely for the WBC project.

131.350 Selection and Retention of the WBC Program Director

This section outlines the proposed competencies for the WBC Program Director, as well as the process the WBC must undertake if the position is vacant. The WBC Program Director, considered by the Agency as the key position for the WBC project, is responsible for managing the day-to-day operation of the WBC. Responsibilities related to the overall management of the WBC may include providing direct services (*i.e.,* Counseling and Training), marketing the program and ensuring program compliance. To ensure effective management of the WBC project, this rule proposes core competencies for the WBC Program Director position and proposes rules for the Interim Program Directors when the Program Director position is vacant.

131.400 Application Procedure

This section outlines the proposed grant application submission process for new and existing WBC Applicant Organizations to participate in the WBC Program. It also identifies proposed general selection criteria. In the ANPRM, comments were received that suggest the SBA should not use geography to help determine the location of a WBC and that proximity to another WBC is not a disqualifier. The SBA follows statutory guidance that individual Applicant Organizations reach a Distinct Population that would not be otherwise served. The Agency proposes Applicant Organizations within proximity of an existing WBC provide a justification for the need of an additional WBC within that area including information about the population density. This helps to ensure that the WBC Program is serving the maximum number of clients with as much coverage as possible, while meeting the statutory requirement of reaching a Distinct Population that would otherwise not be served. This section also outlines the proposed criteria that SBA will use to determine a WBC's level of risk, consistent with 2 CFR part 200, subpart C.

131.410 New Applications

This proposed section codifies the Agency's statutory authority at 15 U.S.C. 656 (B)(1), to use unawarded amounts to fund new Women's Business Centers. This section outlines the process proposed by the SBA to fund new WBCs.

131.420 Renewal Applications

This proposed section proposes to codify the Agency's statutory authority at U.S.C. Code 656 (2), to fund

organizations seeking the renewal of grant awards under the WBC Program. This proposed rule also lists the application criteria and process for existing participants requesting to renew a grant award under the WBC Program.

131.430 Application Decisions

This section outlines the proposed conditions for approval or rejection of an Application for the WBC Program, as authorized by 15 U.S.C. 656 (3)(C). This section also proposes the appeal process WBCs can complete if a renewal application is rejected, as outlined in Section 131.840.

131.500 Grant Administration and Cost Principles

This proposed section codifies the Agency's statutory authority at 15 U.S.C. 656 to fund projects following grant administration guidance under 2 CFR part 200—Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

131.510 Maximum Grant

This proposed section codifies the Agency's statutory requirement that no individual WBC project receive funds in excess of the amount authorized by statute. This rule proposes to include this section to clarify that while an individual WBC project cannot exceed the statutory limit, a Recipient Organization is not limited from establishing multiple WBC projects so long as the projects are distinct from each other and are serving Distinct Populations that would not otherwise be served. A Recipient Organization seeking additional funding for a new project shall follow the Application process, as defined in section 131.400 of this proposed rule for new Applications.

131.520 Carryover of Federal Funds

This proposed section outlines the requirements for the use of Carryover Funds and proposes to limit the number of Carryovers to prevent a WBC from creating a cycle of dependency on Carryover funding. Historically, a significant number of WBCs have consistently requested Carryover of funds. A Carryover of funds generally occurs when a WBC does not fully spend the Federal funds or the Matching Funds as requested and approved in the WBC's budget. This Carryover results in a Recipient Organization having both the Carryover Funds and Option Year funding running concurrently, both of which require Matching Funds. When the Carryover is granted, the Recipient Organization has the responsibility of raising Matching Funds for the Carryover Funds, if not already matched, as well as Option Year funding. This often creates a cycle in which the Recipient Organization will match and spend the Carryover funding, but is then not able to spend the current year funding, thus creating a situation where it must request Carryover funding the following year. While there is never a penalty to requesting less funding, Carryover funding represents an underutilization of the Federal funds provided. The rule proposes to limit Carryover of Federal funds to those WBCs in the first or second year of an initial phase grant.

WBCs in an initial phase of funding may have fewer expenses in the first year as the WBC is establishing itself. However, the WBCs may need additional resources as the programming offered grows. Permitting new WBCs the flexibility to carry over funds during the first two years of participating in the WBC Program ensures that the SBA is utilizing WBC funding efficiently. If a WBC in the initial phase requests a Carryover for both of the first two years, SBA proposes to reduce the funding in the third year by the amount of the second year Carryover to eliminate the cycle of Carryover funding.

131.530 Matching Funds

This proposed section codifies the statutory requirement at 15 U.S.C. 656 for a Recipient Organization to provide Matching Funds equal to half of the Federal amount of the SBA funding for the first two years of its initial award. For the remainder of the time the Recipient Organization participates in the WBC Program, it must provide match of one dollar for every one Federal dollar of its annual Federal award amount, as prescribed in the statute, 15 U.S.C. 656. This rule proposes language which clarifies the process of documenting the match funds and also identifies types of funding that cannot be used as match, such as other Federal funding.

Section 200.306 of Title 2 requires any funds used to match the Federal grant, to be verifiable from the Non-Federal Entity's records. The WBC Program requires a 1 to 1 match for WBCs that have been in the WBC Program for more than two years. A 2 to 1 match (for every two dollars of Federal funds used, 1 dollar of Matching Funds) is required for WBCs in the first two years of the WBC Program). In other words, the statute requires a 2:1 (Federal to non-Federal dollars) match for the first year; 2:1 match for the second year; 1:1 match for the third year; 1:1 match for the fourth year; and a 1:1 match for the fifth year. WBCs can provide Overmatch if they choose to do so; however, if they have used Federal funds to raise match above the required amount, these funds must be used to meet the Federal objective of the WBC Program and must be verifiable. This does not prohibit the Recipient Organization from raising funds separate and apart from the WBC Program. Those funds that are not used as match and are not raised with WBC funds are not subject to the same recordkeeping requirements, as they are not tied to the WBC Program.

131.540 Program Income and Fees

Consistent with 2 CFR 200.307, Recipient Organizations are allowed to charge clients fees for WBC Program services and use the income to defray the costs of delivering the objectives of the grant. This rule proposes to codify that WBCs may charge fees for services provided to their clients. This rule also proposes to identify the type of activities for which the WBC can charge fees and allows WBCs to use the fee income to be counted towards the cash portion of Matching Funds required under section 131.530 of this proposed rule. Historically, WBCs have often collected fees for Training classes to cover the cost of materials and supplies affiliated with providing a Training session or fees when helping clients complete a loan package. Some WBCs have also used a membership model that includes fees. Over the past several years, many WBCs have been exploring ways to charge fees for Counseling in order to ensure that clients commit to participation for a Counseling session. This rule proposes to allow WBCs to charge a retainer fee for Counseling services; however, such fees must not restrict access to any services for economically disadvantaged entrepreneurs.

131.550 Budget Justification

Consistent with 2 CFR part 200, subpart E, Recipient Organizations must follow the cost principles when completing and submitting a budget along with an Application or Annual Work Plan. The budget must include justification for the expenses. This section clarifies several specific cost categories, including Indirect Cost rates and audit expenses. This rule proposes to include guidance on salaries and travel. Under the cost principle section, all costs must be reasonable. Salaries vary by state and region and position. Using a reasonableness standard, SBA proposes that salaries for WBC staff be comparable to similar positions within similarly sized programs in other states

or regions. For travel, reasonableness should be justified in terms of the benefit to the small business community that the WBC is serving. The proposed requirements are consistent with standard cost principles and serve to provide clarity to the Applicant or Recipient Organization. See § 131.600 Reports for details.

131.560 Restricted and Prohibited Costs

Consistent with 2 CFR part 200, subpart E, Recipient Organizations must not use Federal funds or Matching Funds to pay for certain items that are prohibited. This rule proposes language that establishes what costs are considered prohibited. For example, there have been instances in which WBCs have requested the use of WBC Project Funds as collateral for loans. Because this would bind the Federal dollars for a purpose other than delivering the WBC project, the viability of the WBC could be jeopardized. Recipient Organizations have also inquired about using Project Funds to purchase items that could be viewed either as promotional materials, marketing materials, or gifts. Although marketing/advertising the WBC Program is considered an allowable cost under 2 CFR 200.421, certain types of materials are considered gifts for individual use and are not broad-based marketing materials that will reach the population that the women's business center serves.

131.570 Payments and Reimbursements

This proposed section codifies the Agency's statutory authority at 15 U.S.C. 656, to provide payments in lump sum or installments, and in advance or by way of reimbursement to Recipient Organizations. The Agency may disburse up to 25 percent of each year's Federal share awarded to a recipient organization after the Notice of Award has been issued and before the non-Federal Matching Funds are obtained. This rule proposes payments be disbursed as quarterly advances for the first three quarters and on a reimbursement basis for the final quarter, except in cases where a Recipient Organization has not demonstrated its ability to obtain match or has not provided adequate information to demonstrate the use of the Project Funds. On a case-by-case basis, the Agency may determine that a Recipient Organization has not fully complied with the terms of the grant, in which case payments may be made by reimbursement.

131.600 Reports

This section proposes a list of the types of reports required to be submitted and the frequency of submission of the reports. This rule proposes using semi-annual reporting of programmatic and financial reports, and quarterly reporting of Counseling and Training data. In instances where the Agency may have reasons to believe that a Recipient Organization poses a higher risk of non-performance or non-compliance, the Agency will include any additional requirements to report quarterly in the annual Notice of Award. Consistent with 2 CFR part 200, subpart C, the Agency is required to assess the risk level of each WBC or WBC Applicant Organization prior to making an award. Section 131.400 of this rule proposes the risk assessment criteria the Agency will use for WBC awards. This rule also proposes to require Recipient Organizations to submit client activity reports, including Counseling and Training Records. These reports are submitted electronically and allow the Agency to monitor and report on WBC Program performance for each Recipient Organization and the WBC Program as a whole. The information also enables the Agency, in a streamlined process, to conduct detailed WBC Program evaluations, assess program management and performance, and conduct performance monitoring and program-outcome reporting. Performance reports should be consistent with the budget justification that is submitted as part of the application process or Annual Work Plan submission.

131.700 Oversight of the WBC Program

This proposed section codifies the statutory requirement at 15 U.S.C. 656 for the Agency to conduct annual programmatic and financial examinations of each WBC. Currently, to satisfy these requirements, the Agency utilizes reports submitted by the WBCs, reports submitted by the SBA District Office staff, programmatic site visits, and financial examinations. This combination of oversight allows the Agency to effectively monitor the WBC portfolio without requiring WBCs to submit all of the documentation for the program. Additionally, the Agency has also recently changed the frequency of the reporting schedule outlined in 131.600 to minimize the burden on WBCs that are effectively delivering the program.

131.710 SBA Review Authority

This section of the rule proposes how the SBA will monitor program performance consistent with 2 CFR 200.328.

131.720 Audits, Examinations and Investigations

This section proposes to require new Women's Business Centers participating in the Women's Business Center Program for the first time to have post-award financial examinations conducted by Agency staff or designee(s). Many new initial Recipient Organizations have never received Federal funds and may never have been required to meet Federal financial management standards. As part of the proposed post-award examination process, the examiner would determine the adequacy of the WBC's financial management system and make recommendations for improvement, if needed. The Agency anticipates that the examinations and recommendations will assist the WBC in avoiding financial findings and/or recoupment during future financial examinations or audits.

In addition to the post-award examination, this section outlines the SBA's proposed requirement, consistent with the statute 15 U.S.C. 656, that all other WBCs receive comprehensive financial examinations, as scheduled by the SBA's Financial Examination Unit. The proposed process for complying with this requirement is outlined in this section.

131.800 Cooperative Agreements and Contracts

This proposed section codifies the statutory requirement at 15 U.S.C. 656 for the Agency to provide financial assistance to Recipient Organizations in the form of grants, contract, or Cooperative Agreement. Currently, a Cooperative Agreement serves as the vehicle to provide the financial assistance to the Recipient Organization to establish and maintain a WBC. The Cooperative Agreement is signed annually and contains the amount of Federal funding, a negotiated budget and agreed-upon performance milestones. The Cooperative Agreement contains the terms and conditions of the award and identifies any special considerations, including the annual determination of risk level. This rule proposes to require SBA District Offices to negotiate the annual performance goals with each Recipient Organization. SBA District Offices have a better understanding of local and regional economic conditions and the needs of women entrepreneurs, and can therefore make a better informed determination of the appropriate performance milestones with Recipient Organizations in their

respective districts. In addition, this section proposes specific requirements when WBCs use Federal funds to contract for goods and services. This is to ensure WBCs do not supersede the contracting limits and thereby, in effect, change the grant to a pass-through grant.

It is the Agency's policy that contracting out more than 49 percent of a grant (except in certain circumstances) constitutes a subgrant. Consistent with this policy, this rule proposes that the WBC not expend more than 49 percent of its total Project Funds on contractors and consultants.

131.810 Other Federal Grants

This proposed section codifies the statutory requirement at 15 U.S.C. 656(d) to allow a WBC to enter into a contract with other Federal departments or agencies to provide specific assistance to women entrepreneurs. With the exception of Community Development Block Grants (CBDG), grants received from other Federal entities may not be used as Matching Funds for the WBC grant. CDBG statutory language allows CDBG funds to be used as Matching Funds to other Federal programs. The CDBG regulations at 24 CFR 570.201(g) further elaborate on this eligibility criterion. On occasion, the Agency may provide additional assistance to a WBC through programs such as the Recovery Improvements for Small Entities (RISE) After Disaster Act. These funds are separate from the regular WBC grants but are provided to WBCs to spur disaster recovery.

131.820 Revisions and Amendments to Cooperative Agreements

Consistent with 2 CFR part 200, subpart D, Post Federal Award Requirements, Recipient Organizations are required to report deviations from budget or project scope or objective, and request Prior Approvals from Federal awarding agencies for budget and WBC Program plan revisions. This proposed rule outlines the common revisions that require Prior Approval by the Agency. These include changes in the staffing of the WBC Program Director, changes in project scope, program activity or location that could potentially alter the negotiated milestones in the Cooperative Agreement.

131.830 Suspension, Termination and Non-Renewal

Consistent with 2 CFR 200.338, the Agency may take action to suspend, terminate or non-renew a grant to a Recipient Organization for cause. This rule proposes the instances for which the Agency may take action, identifies the administrative procedures for each action, and outlines the appeal rights for each action. This rule also proposes the process that the SBA will take when an action is reversed.

131.840 Dispute Resolution Procedures

Consistent with 2 CFR 200.341, the Agency currently provides opportunity for Recipient Organizations to Dispute financial and programmatic decisions of the Office of Women's Business Ownership. This rule proposes to codify the current Dispute procedures to provide an opportunity for a Recipient Organization to submit a written statement describing the subject of a Dispute and to submit an appeal if the Recipient Organization receives an unfavorable decision from the Agency.

131.850 Closeout Procedures

Consistent with 2 CFR 200.343, this rule proposes to codify the current process by which the Agency would close out a Federal award if it is determined that all applicable administrative actions and all required work of the Federal award have been completed by the Recipient Organization. These actions help to ensure that the final proper payment can be made to the Recipient Organization after completing a reconciliation of all accounts, including an inventory of property and usable supplies, WBC Program Income balances, and client and financial records. After receiving the final annual financial report to ensure proper final payments, the Agency would issue a final letter indicating that all financial and WBC Program issues are fully reconciled.

131.900 Ensuring Client Privacy

SBA proposes to codify the legislative requirements for WBCs and the Administration to protect the privacy of any individual or small business receiving assistance in the Program. Under this proposed rule, in accordance with Section 21(a)(7) of the Act, a WBC, including its contractors and other agents, is not permitted to disclose to an entity outside the individual WBC, the name, address, or telephone number, referred to as 'client contact data' of any individual or small business without the consent of such individual or small business with three exceptions.

This rule proposes to require WBCs to provide an opportunity for clients to opt in to allow the SBA to obtain their contact data. The rule would codify how the SBA could use the permitted client contact data only to conduct studies that help stakeholders better understand how the services the client received affect their business outcomes over time. These studies would include, but not be limited to, program evaluation and performance management studies.

In the past, SBA District Offices may have used client contact data to solicit loan applications. The functions and goals of the District Offices have changed over the years. Today this type of solicitation is not a function of SBA District Offices and has not been in recent years. The agency will not allow use of client contact data for any other purpose beyond program studies.

This rule also proposes to prohibit the denial of services to clients solely based on a client's refusal to provide consent to use their contact data for study purposes. Section 21(a)(7)(C) of the Act directs the agency to publish standards for requiring disclosures of client information during a financial audit. This rule proposes to require other Federal or State agencies making such disclosure requests to submit formal requests including a justification for the need for individual client contact and/or program activity data for the Administrator's review on a case-by-case basis. Public comments on these proposed standards are encouraged.

This rule also proposes to codify the current privacy protections in place in the Program currently employed by the agency. Under this proposed rule, any reports on the Program produced by a WBC, including its contractors and other agents, and the agency, cannot disclose individual client information without consent from the client. Any such reports must only report activity data in the aggregate, unless given consent, so as to protect the individual privacy of clients.

IV. Comments Request

Readers are encouraged to review closely each section of the proposed rule in conjunction with current regulations to fully comprehend the extent of the rule and its changes. The SBA invites comment on all aspects of this proposed rule, including the underlying policies. Submitted comments will be available to any person or entity upon request.

Compliance With Executive Orders 12866, 13563, 12988, 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

Executive Order 12866

The Office of Management and Budget has determined that this proposed rule constitutes a ''significant regulatory action'' under Executive Order 12866.

This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for this regulatory action?

The WBC Program was established in 1988 as a pilot program and became permanent in 2007. Regulations for the WBC Program had not been previously promulgated. The SBA has used the Program Announcement and Notice of Award to incorporate statutory requirements to implement the WBC Program. The annual Program Announcement and Notice of Award have become, for all practical purposes, documents which interpret the statute. The SBA believes it is past time for regulations outlining guidance for the policies and procedures for the WBC Program. This regulation incorporates the changes required by the OMB circular published by OMB and other program changes that have taken place since the WBC Program was initially established. Additionally, the Association of Women's Business Centers has supported implementing regulations to streamline and standardize processes.

Further, the SBA received eight comments to the ANPRM that was published on April 22, 2015. All of the comments relevant to the WBC Program regulations were considered in the drafting of this proposed rule.

2. What are the potential benefits and costs of this regulatory action?

The WBC Program received $17 million in Federal funds which it provided to over 100 Women's Business Centers in fiscal year 2016. The Grantees are required to supply a 1-to-1 match of those funds, except in the first two initial years in the program for which the match is 2 to 1 (Federal to match). The benefit of this requirement is that the Grantee is invested as much as the Federal government in making the WBC Program a success. The small businesses benefit from the no-cost or low-cost Counseling and Training. Specifically, in 2015, the WBC Program counseled 20,473 entrepreneurs; trained 120,030 entrepreneurs, created 771 new businesses and raised $87,630,000 in capital infusion. Further, as stated above, the potential benefits of this proposed rule are based on incorporating all the changes that have occurred with the publication of 2 CFR part 200 and a streamlining of both the Program Announcement and the Notice of Award. The new regulations will provide additional clarification for the Program Announcement(s) issued by the Office of Women's Business Ownership.

The costs to the SBA in making this revision are minimal, as most of the requirements of this rule are currently being followed. The estimated annual cost to the Federal government for oversight of these WBCs is currently provided for in the existing SBA infrastructure. Similarly, the costs to the grantees is also minimal as they, too, are following the requirements in this NPRM, which are currently included in their annual Cooperative Agreement. No additional direct costs are projected to be incurred by WBCs for oversight and related functions in this proposed rule.

3. What alternatives have been considered?

After publishing the ANPRM on April 22, 2015, and reviewing the comments submitted, the SBA believes that publishing regulations for the WBC Program would be the best way to create long-lasting consistency in the implementation of the WBC Program. Another alternative would be to do nothing and continue to rely on grant documents to implement the WBC Program. Furthermore, the statute requires SBA to publish regulations in general and specifically in regards to the Privacy Act Requirements of the WBC Program. The Privacy Act Requirements are included in this regulation to satisfy that requirement.

Executive Order 13563

The ANPRM was published on April 22, 2015, (Docket Number 2015–09391) and eight comments were received. The comments varied greatly from specific to general and covered a wide variety of topics, from providing clearer definitions to streamlining procedures and identifying actions requiring Prior Approval from the SBA. The SBA reviewed all the comments and took them under consideration when revising these proposed regulations. Further, SBA held monthly conference calls with the grantees, discussing various current topics which included the proposed regulations. Additionally, the Office of Women's Business Ownership staff attends the annual Women's Business Center training conferences that include discussions of policy, procedures and the proposed regulations. A summary and disposition of the comments includes, but is not limited to, the following: (1) Training should be ongoing for Women's Business Centers. The Office of Women's Business Ownership has initiated ongoing training for Women's Business Centers through its monthly conference calls and one-on-one teleconference calls, as requested; (2) The SBA should provide full funding to WBCs and not require fundraising. The funding levels and match requirements that are included are consistent with the statute, 15 U.S.C. 656; (3) The SBA data collection system must be upgraded. SBA is currently working to improve the system; (4) The regulation should provide a definition for Distinct Population. A definition is included in the proposed regulations; (5) Develop a repository of information that could be used by all of the WBCs, including templates, program updates and training materials. While, the Office of Women's Business Ownership did not include the requirement for a repository in these draft regulations, the office will work with women's organizations to develop information that will be available to all WBCs; 6) Provide a definition for in-kind services and do not limit the amount a volunteer can provide as in-kind activity. The draft regulations references 2 CFR 200.96 for the definition of in-kind. Also, the SBA does not limit the amount of In-kind Contributions from a service provider, but the amount of in-kind that can be used as match is limited and is consistent with the statute, 15 U.S.C. 656. Comments for the ANPRM can be located at: *https://www.regulations.gov/docketBrowser?rpp=50&so=DESC&sb=postedDate&po=0&dct=PS&D=SBA-2015-0007.*

The SBA did not consult with any other agencies when drafting the proposed regulations as the Women's Business Center Program does not have any joint grants with other agencies.

Executive Order 12988

For the purposes of Executive Order 12988, Civil Justice Reform, the SBA has determined that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in Sec. 3(a) and 3(b)(2), to minimize litigation, eliminate ambiguity and reduce burden. The proposed regulations would provide for rights of appeal to the SBA's WBC Program participants in the event they are aggrieved by an Agency decision, thereby limiting the possibility of litigation by these entities. This proposed rule would not have retroactive or pre-emptive effect.

Executive Order 13132

For the purposes of Executive Order 13132, the SBA determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Compliance With the Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency promulgates a proposed rule, the Regulatory Flexibility Act requires the agency to prepare an initial regulatory flexibility analysis (IRFA), which describes the potential economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This rule covers both the application process to become funded as a Women's Business Center and the on-going operations for currently funded WBCs. As the populations are different for the application process and the existing WBCs, the analysis is included for each.

This proposed rule could theoretically affect all nonprofit entities as the statute requires that an entity be organized as a nonprofit in order to participate. According to the IRS, for tax year 2010, there are over 269,000 entities that filed returns as a 501(c)(3). The NAICs codes that are most relevant to participate in the program are 541611, Administrative Management and General Management Consulting Services and 541990, All Other Professional, Scientific and Technical Services. The size standard for both of these NAICs codes is $15 million in average annual receipts. According to the IRS, 92 percent of all 501(c)(3) filers had total revenue greater than $10 million. The majority of the 501(c)(3) entities would fall under the threshold as a small entity. In addition, as the application process is voluntary and does not require a nonprofit entity to apply, the vast majority of nonprofits would not be affected. Over the past 5 years, there were a total of 133 new applications submitted for the WBC Program—averaging 25–35 applications per year. The SF 424 (Application for Federal Assistance) on *grants.gov* does not include a field for revenue size. Based on the majority of the entities being small, SBA can presume that the majority of the Applicant Organizations are also small. It is projected that a grants writer would take approximately 20 hours to complete and submit the required application forms through grants.gov. For a grants writer at an average of $30-per hour, this would cost approximately $600. These estimates are based on the burden statements associated with the grants.gov application forms and anecdotal information from Applicant Organizations to the WBC Program. Therefore, the SBA has determined that the application section of the proposed rule would not have a significant impact on a substantial number of small entities.

There are currently 114 entities that participate in the WBC Program, all of which are small entities. However, the SBA has determined that the impact on these entities affected by the proposed rule will not be significant. The proposed rule codifies current policies and procedures that are already achieved through a Cooperative Agreement with the SBA. It does not include new reporting requirements. Rather it standardizes existing policies to ensure transparency and consistency which in theory will reduce the cost to both the WBC participants and SBA. A WBC participating in the WBC Program submits a Federal Financial Report and attachments twice a year. The estimated burden for these reports is 2 hours twice a year. The annual submission of a work plan is substantially less than the Application and is only to update any changes from the initial Application. The estimate for these forms on an annual basis is a total of 14 hours. For a grants writer at $30 per hour, the annual estimated cost would be $420. Accordingly, the Administrator of the SBA hereby certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this proposed rule would not impose additional reporting and recordkeeping requirements under the Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35. Currently, there are eight Paperwork Reduction Act submissions associated specifically with the WBC Program: (1) OMB control number 3245–0140 Notice of Award and Cooperative Agreement; (2) OMB control number 3245–0169, Federal Cash Transaction Report, Financial Status Report, Program Income Report, and Narrative Program Report; (3) OMB control number 3245–0324, EDMIS data collection (641 and 888 forms); (4) OMB control number 4040–0004, SF 424, Application for Financial Assistance; (5) OMB control number 4040–0006, SF 424A, Budget Summary for non-construction projects; (6) OMB control number 4040–0007, SF 424B, Assurances for non-construction projects; (7)OMB control number 4040–0013, SF–LLL, Disclosure of Lobbying Activities; and, (8) 4040–0014SF–425, Federal Financial Report. These reports will not change and no new reports are required in the proposed rule.

List of Subjects in 13 CFR Part 131

Entrepreneurship, Grant programs—business, Minority businesses—women, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, SBA proposes to add 13 CFR part 131 as follows:

PART 131—WOMEN'S BUSINESS CENTER PROGRAM

Sec.

131.100 Introduction.
131.110 Definitions.
131.200 Eligible Entities.
131.300 Women's Business Centers (WBCs).
131.310 Operating Requirements.
131.320 Area of Service.
131.330 WBC Services and Restrictions on Service.
131.340 Specific WBC Program Responsibilities.
131.350 Selection and Retention of the WBC Program Director.
131.400 Application Procedures.
131.410 New Applications.
131.420 Renewal Applications.
131.430 Application Decisions.
131.500 Grant Administration and Cost Principles.
131.510 Maximum Grant.
131.520 Carryover of Federal Funds.
131.530 Matching Funds.
131.540 Program Income and Fees.
131.550 Budget Justification.
131.560 Restricted and Prohibited Costs.
131.570 Payments and Reimbursements.
131.600 Reports.
131.700 Oversight of the WBC Program.
131.710 SBA Review Authority.
131.720 Audits, Examinations and Investigations.
131.800 Cooperative Agreement and Contracts.
131.810 Other Federal Grants.
131.820 Revisions and Amendments to Cooperative Agreements.
131.830 Suspension, Termination and Non-renewal.
131.840 Dispute Procedures.
131.850 Closeout Procedures.
131.900 Ensuring Client Privacy.

Authority: 15 U.S.C. 656.

§ 131.100 Introduction.

The Women's Business Centers (WBC) program has grown and evolved to provide a variety of services to many entrepreneurs ranging from those interested in starting businesses to those looking to expand existing businesses.

SBA, through the Office of Women's Business Ownership (OWBO) is responsible for the general management and oversight of the Women's Business Center Program (WBC program). SBA issues an annual cooperative agreement to recipient organizations for the delivery of assistance to individuals and small businesses. The WBC program acts as a catalyst for providing in-depth,

substantive outcome-oriented business services, including training, counseling, and other technical assistance, to women entrepreneurs, both nascent and established businesses, a representative number of whom are socially and economically disadvantaged. By providing a wide variety of training curriculum and counseling expertise through Women's Business Centers (WBCs), the SBA meets the needs of the individual client in the local marketplace.

§ 131.110 Definitions.

Advisory board. A group established to confer with and provide recommendations to the Women's Business Center Program Director on matters pertaining to the operation of the WBC. The advisory board will also act as a catalyst to raise funds for the Women's Business Center.

Applicant organization. An entity that applies for Federal financial assistance to establish, administer, and operate a WBC under a new or renewed cooperative agreement.

Application (also known as the proposal). The written submission by a new applicant organization or an existing recipient organization describing its projected WBC activities for the upcoming budget period and requesting SBA funding for use in its operations.

Annual work plan. See option year work plan and budget.

Area of service. The State or Territory, or a regional portion of a State or U.S. Territory, in which SBA approves the WBC to provide services.

Assistant Administrator of Office of Women's Business Ownership. (AA/OWBO) The AA/OWBO is statutorily responsible for management of the WBC program. The AA/OWBO may elect to designate staff to complete tasks assigned to the AA/OWBO position. When AA/OWBO is referenced, it includes the designee.

Authorized official. A person who has the legal authority to sign for and/or speak on behalf of an organization.

Budget period. The period of performance in which expenditures and obligations are incurred by a WBC, consistent with 2 CFR 200.77.

Carryover funds (carryover). Unobligated Federal funds reallocated from one budget period to the next through an amendment to the current year's cooperative agreement.

Cash match. Non-Federal funds specifically budgeted and expended by the recipient organization for the operation of a WBC project. Cash match must be in the form of cash and/or program income.

Client. An entrepreneur or existing small business seeking services provided by the WBC.

Conditional approval. May be granted when an application has been determined to meet eligibility requirements and has been recommended for funding, but may require special conditions, such as submitting required certifications, assurances or other documentation.

Cognizant agency for audit. The Federal agency designated to carry out the responsibilities as described in 2 CFR 200.513(a) responsibilities.

Cognizant agency for indirect costs. The Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under 2 CFR 200.19.

Counseling record. A record that provides individual client contact information, demographics about the client/business and data on the counseling provided.

Cooperative agreement (also known as notice of award). A legal instrument of financial assistance between the SBA and a recipient organization that is consistent with 31 U.S.C. 6302–6305 and provides for substantial involvement between SBA and the recipient organization in carrying out the proposed activities.

Counseling. Services provided to an individual and/or small business owner that are substantive in nature and require assistance from a resource partner or SBA district office personnel in the formation, management, financing, and/or operation of a small business enterprise and are specific to the needs of the business or individual.

Direct costs. Costs as defined in 2 CFR 200.413.

Dispute. A programmatic or financial disagreement that the recipient organization requests be handled according to the dispute resolution procedures under § 131.840.

Distinct population. A specific targeted group. For the purpose of the WBC program, the targeted group is women entrepreneurs.

District office. The local SBA office charged, in collaboration with the WBCs, with meeting the needs of women entrepreneurs in the community.

District office technical representative. An SBA employee located within an SBA district office and designated by the SBA to provide local oversight and monitoring of a particular WBC or WBCs.

Financial examiner. An SBA employee, or designee, charged with conducting financial examinations.

Full-time. An employee all of whose time and effort (minimum of 30 hours per week, as defined by the Internal Revenue Service, § 4980H(c)(4)) is allocated to the WBC project. An employee who is full-time under the WBC should not engage in activities that do not pertain to the WBC project.

Grants and Cooperative Agreement Appeals Committee. The SBA committee, appointed by the SBA Administrator that resolves appeals arising from disputes between a recipient organization and the SBA.

Grants management specialist. An SBA employee within Office of Women's Business Ownership responsible for the budgetary review and financial oversight of WBC agreements.

Indirect costs. Costs as defined in 2 CFR 200.56.

In-kind contributions (third party). Costs incurred as described in 2 CFR 200.96.

Interim Program Director. An individual temporarily assigned by the recipient organization for no more than 60 days to fulfill the responsibilities of a vacant WBC Program Director position.

Key personnel/key employee. For the purposes of the WBC program, the WBC Program Director is identified as the key employee.

Loan packaging. Includes any activity done in support of a client or in preparation of the client's credit application to a lender for a loan, line of credit, or other financial instrument.

Matching funds. For all Federal awards, any shared costs or matching funds and all contributions, as defined in 2 CFR 200.306.

Microloan. A short-term, fixed-interest rate loan of not more than $50,000 made by an Intermediary to an eligible small business. The SBA manages a Microloan Program that focuses on reaching socially and economically disadvantaged entrepreneurs. See 13 CFR 120, Subpart G—Microloan Program.

Non-federal entity. An organization, as defined in 2 CFR 200.

Nonprofit organization. Any corporation, trust, association, cooperative, or other organization as defined in 2 CFR 200.70.

Notice of award. See cooperative agreement.

Option year. Additional 12-month budget period awarded after the first budget year (base year) as determined by the period of performance identified in the cooperative agreement.

Option year work plan and budget. The written submission by an existing WBC applying for an additional year of

grant funding. This submission is required to ensure the recipient organization's continued alignment with the WBC program and to update its description of projected WBC activities for the upcoming option year budget period.

Overmatch. Any non-Federal contribution applied to the WBC award in excess of the minimum amount of match required. See § 131.530 for specific details on match requirements.

Office of Women's Business Ownership Grants Management Officer. An SBA employee within the Office of Women's Business Ownership with authority delegated by the AA/Office of Women's Business Ownership, who meets Office of Management and Budget standards and certifications to obligate Federal funds by signing the notice of award.

Office of Women's Business Ownership Program Manager. An SBA employee designated by the AA/OWBO who oversees and monitors WBC operations.

Period of performance. The period of time as specified in 2 CFR 200.77.

Principal investigator. The individual primarily responsible for achieving the technical success of the project, while also complying with the financial and administrative policies and regulations associated with the grant

Prior approval. The written concurrence from the appropriate Office of Women's Business Ownership official for a proposed action or amendment to a WBC cooperative agreement. Specific guidelines governing the prior approval process, including the documentation required, are outlined in the cooperative agreement.

Program announcement. The SBA's annual publication of requirements, to which an applicant organization must respond to in its new 5-year initial or 3-year renewal application.

Program income. Gross income earned by the non-Federal entity, as described in 2 CFR 200.80.

Project funds. All funds authorized under the cooperative agreement including, Federal funds and non-Federal cash, third-party in-kind contributions (third party) and program income, as well as the Federal funds and non-Federal match authorized or reported as carryover funds.

Project period. The period of time specified in the notice of award, which identifies the start and end date of the recipient organization's 5-year or 3-year project.

Recipient organization. The selected applicant organization that receives Federal funding to deliver WBC services under a cooperative agreement. By statute, only private, nonprofit organizations certified under § 501c of the Internal Revenue Code of 1986 can be recipient organizations.

Socially and economically disadvantaged women. Women who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Also includes women whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business.

Specialized services. WBC services other than basic counseling and training. The services can include, but are not limited to: assistance with disaster readiness; home-based businesses; agribusinesses; and construction, child care, elder care, manufacturing or procurement businesses.

State or U.S. Territory. For the purpose of these regulations, State or U.S. Territory will mean the 50 United States, and the U.S. Territories of Guam, the U.S. Virgin Islands, American Samoa, the Northern Mariana Islands, the Commonwealth of Puerto Rico and the District of Columbia.

Training. A qualified activity or event presented or cosponsored by a WBC, that delivers a structured program of knowledge, information or experience on an entrepreneurial or business-related subject.

Training record. A record that provides aggregate data about a training event to include training topic, date, attendance, program format and evaluation of the training.

Women's Business Centers. Women's Business Centers represent a national network of educational centers throughout the United States and its territories that assist women in starting and growing small businesses.

WBC Program Director. An individual whose time and effort is allocated solely to the WBC program. The WBC Program Director position is the only positon that requires approval from the Office of Women's Business Ownership prior to hiring.

Women-owned businesses. Business concern that is not less than 51 percent owned by 1 or more women and the management and daily operations are controlled by 1 or more women.

§ 131.200 Eligible Entities.

(a) *Eligible Organizations.* By statute, only a nonprofit organization with active 501c certification from the United States Department of Treasury/Internal Revenue Service is eligible to apply for Federal funding to operate a WBC project.

(b) *Ineligible Organizations.* Organizations ineligible to receive Federal funds to manage a WBC project include, but are not limited to the following:

(1) Any organization that owes an outstanding and unresolved financial obligation to the Federal government;

(2) Any organization, employee or principal investigator of an organization that is currently suspended, debarred or otherwise prohibited from receiving awards, contracts or grants from the Federal government;

(3) Any organization with an outstanding and unresolved material deficiency reported under the requirements of the Single Audit Act within the past three years, consistent with 2 CFR 200.501;

(4) Any organization that has had a grant or cooperative agreement involuntarily terminated or non-renewed by the SBA for cause;

(5) Any organization that has filed for bankruptcy within the past five years;

(6) Any organization that does not propose to hire and employ a full-time WBC Program Director whose time is solely dedicated to managing the day-to-day operation of the WBC and staff;

(7) Any organization that proposes to serve as a pass-through and permit another organization to manage the day-to-day operations of the project;

(8) Any organization that had an officer or agent acting on its behalf convicted of a felony criminal violation under any Federal law within the preceding 24 months; and,

(9) Any other organization the SBA reasonably determines to be ineligible to receive Federal funds to manage a WBC project.

§ 131.300 Women's Business Centers (WBCs).

Women's Business Centers (WBCs) are established under the statutory authority of the SBA through cooperative agreements with nonprofit recipient organizations. WBC program announcements and requests for work plans and budgets establish the operating and performance parameters, initiatives, and strategies for each project period.

(a) *Program Announcements.* (1) The SBA will issue an annual program announcement each fiscal year to fund those recipient organizations already operating successful WBC projects. This program announcement will detail the goals, objectives and other terms and conditions for renewable projects entering a three-year program. The

issuance of the program announcement is contingent upon SBA's approved budget and funding availability.

(2) At any time during the current fiscal year, and based on the availability of funds, the SBA may, at its discretion, also issue a program announcement for the upcoming fiscal year, detailing the goals, objectives and other terms and conditions for new WBC projects. New WBC projects may be awarded a maximum of one base year and 4 additional option years of funding.

(3) The SBA reserves the right to cancel a program announcement, in whole or in part, at the agency's discretion.

(b) *Option Year Work Plans and Budgets.* (1) By April 30, of each year, the SBA will issue instructions for the submission of the option year work plan and budget for those WBCs currently in (and wishing to continue in) SBA's WBC program that will have successfully completed year 1, 2, 3, or 4 of an initial project, or year 1 or 2 of a renewal project by September 29th, In order to be considered for renewal, submissions for option year work plans and budget must be received in the Office of Women's Business Ownership by the timeline specified in the annual instructions for the submission of each work plan.

(2) The SBA reserves the right to revise the submission requirements, in whole or in part, at the agency's discretion.

(3) Awarding option year funding is at the sole discretion of the SBA and is subject to continuing program authority, the availability of funds and satisfactory performance by the recipient organization.

(c) *Cooperative Agreement.* (1) The terms and conditions must include, but are not limited to, Office of Management and Budget guidelines for grant administration and cost principles, regulations and laws governing the WBC project and federally sponsored programs, and current-year guidelines from the program announcement.

(2) The SBA will issue a notice of award annually to each eligible WBC participant, based on the acceptance of the annual proposal or work plan.

(d) *Negotiating the Cooperative Agreement.* The WBC's participation in negotiations should include, but is not limited, to the following:

(1) Collaborating with the local SBA district office to develop annual goals for the WBC project;

(2) Receiving written concurrence from the SBA district office staff for inclusion in the application submission;

(3) Developing data and analyses to design the WBC services needed by the small business community, with focus on women and women-owned businesses;

(4) Proposing services and the appropriate structure to deliver those services to meet the needs of the small business community, specifically targeting women, including a representative number of women whom are socially and economically disadvantaged;

(5) Ensuring that adequate technical and managerial resources are proposed for the WBC to achieve the performance goals and program objectives as set forth in the cooperative agreement.

(e) *Women's Business Center (WBC) Funds.* Budgeted WBC funds (including match) must be used solely for the WBC project.

§ 131.310 Operating Requirements.

(a) The recipient organization has the contractual responsibility for the duties of the WBC project, which must be a separate and distinct entity within the recipient organization, having its own budget, its own staff, and a full-time WBC Program Director.

(b) The Women's Business Center must establish an advisory board that is representative of the community it will serve and that will confer with and provide recommendations to the WBC Program Director on matters pertaining to the operation of the WBC. The advisory board will also assist the WBC in meeting the match requirements of the program.

(c) An employee who is full-time under the Women's Business Center program should not engage in activities that do not pertain to the WBC project. The WBC is not prohibited from operating other Federal programs that focus on women or other underserved small business concerns as long as doing so does not hinder the ability to deliver the services of the WBC program.

(d) The WBC must have the facilities and administrative infrastructure sufficient to operate a center, including program development, program management, financial management, reports management, promotion and public relations, program assessment, program evaluation and internal quality control. The Women's Business Center must document annual financial and programmatic reviews and evaluations of its center(s) consistent with § 131.600(a).

(e) Any new WBC that is accepted into the WBC program after the effective date of this rule must include the specific identification ''Women's Business Center'' as part of its official name. Any WBC that is applying for a renewal grant after the effective date of this rule must also include the specific identification ''WBC'' as part of its official name. Any existing WBC that does not include ''Women's Business Center'' in its name must include the following language prominently on their Web site and promotional documents: ''The Women's Business Center is funded in part by the U.S. Small Business Administration.''

(f) The WBC must maintain adequate staff to operate the WBC, including the WBC Program Director and at least one other person, preferably a business counselor.

(g) The WBC must use an enforceable conflict-of-interest policy that is consistent with the requirements of 2 CFR 2701.112 and which is signed annually by each WBC employee, contractor, consultant and volunteer. The policy must be uniform among all employees, contractors, consultants and volunteers working for or with the WBC program.

(h) The WBC must be open to the public a minimum of 40 hours a week (which must include evening and weekend hours) and meet other requirements as specified in the program announcement. Emergency closures must be reported to the district office technical representative and OWBO Program Manager as soon as is feasible.

(i) The WBC will comply with 13 CFR parts 112, 113, 117, and 136 requiring that no person be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the WBC. However, all WBC marketing programs and services must target women.

(j) The WBC project must not be listed in the organizational structure under any other federal grant.

§ 131.320 Area of Service.

(a) *Cooperative Agreement.* The recipient organization will identify in its application the area of service for which it plans to provide assistance. Once approved, the AA/OWBO will define, in writing, the geographic area of service of each recipient organization. More than one recipient organization may be located in a State, Territory or other geographic area. Once the SBA has entered into a cooperative agreement with a recipient organization, the area of service cannot be changed without prior approval by the Office of Women's Business Ownership. A subsequent decision by the recipient organization to change the area of service in the cooperative agreement without prior approval by the SBA may constitute

grounds for suspension, non-renewal and/or termination as set forth in § 131.830.

(b) *Location of WBC Projects.* An organization responding to a program announcement within proximity of an existing WBC project shall provide in its written narrative a justification for placing another WBC in the proximity of an existing WBC, including the number of socially and economically disadvantaged persons within the proposed service area, census data, and population density. The information provided must clearly justify the necessity for an additional WBC project within the same area of service as the existing WBC project. SBA will take the narrative and any supporting documentation into consideration when reviewing, ranking and scoring the applicant organization's proposal.

(c) *Resources.* An applicant organization's plan for the commitment and allocation of resources, including the site location where the WBC plans to provide services will be reviewed as part of the application review process for each budget period to ensure adequate coverage in the area of service.

§ 131.330 WBC Services and Restrictions on Services.

(a) *Services.* The WBC must provide prospective entrepreneurs and existing small businesses, known as clients, with training, counseling, and specialized services. The services provided must relate to the formation, financing, management and operation of small business enterprises. The WBC must create and update counseling records to document each time that counseling is provided to a client. The WBC must provide services that meet local needs as determined through periodic needs assessments and that must be adjusted accordingly to keep pace with changing small business needs. Any changes to the scope of services provided during the budget period must be in accordance with § 131.820.

(b) *Access to Capital.* (1) WBCs must provide training and counseling services that enhance a small business concern's ability to access capital, such as business plan development, financial statement preparation/analysis, and cash-flow preparation/analysis.

(2) WBCs may provide loan packaging services and other services to WBC clients, and may charge a fee for such assistance. See § 131.540. Any fees so generated will constitute program income. The WBC must ensure that these services are not credited to both the WBC program and any other Federally-funded program, thereby double counting the efforts.

(3) WBCs shall prepare their clients to represent themselves to lending institutions. WBC personnel may attend meetings with lenders to assist clients in preparing financial packages; however, neither WBC staff nor their agents may take a direct or indirect role in representing clients in any loan negotiations.

(4) WBCs shall disclose to their clients that financial counseling assistance, including loan packaging, will not guarantee receipt or imply approval of a loan or loan guarantee.

(5) WBCs must not intervene in loan decisions, service loans, make credit recommendations or influence decisions regarding the award of any loans or lines of credit on behalf of the WBC's clients unless the WBC operates as an SBA microlender and is awarding an individual or small business concern an SBA microloan.

(6) When the recipient organization operates both a WBC and a separate loan program, the WBC must disclose to the client other financing options that may be available besides the one offered by the recipient organization to ensure that the client has the opportunity to seek financing outside of the recipient organization.

(7) WBCs must disclose to loan packaging clients any financial relationships between the WBC and a lender or the sale of their credit products.

(8) With respect to loan programs, allowable activities include: assisting clients in formulating a business plan, preparing financial statements, completing forms that are part of a loan application, and accompanying an applicant appearing before the SBA or other lenders. See paragraph (5) of this section for further limitations.

(9) WBCs are to collaborate with state, local and federal government agencies to identify other resources that may be available to its clients and to facilitate interactions deriving from these collaborations.

(c) *Special Emphasis Initiatives.* In addition to requiring WBCs to assist women entrepreneurs including a representative number of women who are socially and economically disadvantaged, the SBA may identify and include in the cooperative agreement other portions of the general population WBCs must target for assistance.

§ 131.340 Specific WBC Program Responsibilities.

(a) *Policy Development.* The AA/OWBO will establish and modify WBC program policies and procedures to improve the delivery of services by WBCs to the small business community, and to enhance compliance with applicable laws, regulations, Office of Management and Budget guidelines and Executive Orders.

(b) *Program Administration.* The AA/OWBO will recommend the annual program budget, establish appropriate funding levels in compliance with the statute and review the annual budgets submitted by each organization.

(c) *Responsibilities of WBC Program Director.* (1) The WBC Program Director must be a full-time employee of the recipient organization and not a contractor, consultant or company. The WBC Program Director will direct and monitor all program activities and all financial affairs of the WBC to ensure effective delivery of services to the small business community and compliance with applicable laws, regulations, Office of Management and Budget circulars, Executive Orders, and the terms and conditions of the cooperative agreement.

(2) The WBC Program Director must have the necessary authority from the recipient organization to control all WBC budgets and expenditures, as well as any hiring and staffing decisions required to meet the program objectives, under the cooperative agreement.

(3) The WBC Program Director may not manage any other programs under the recipient organization.

(4) The WBC Program Director will serve as the SBA's principal contact for all matters involving the WBC.

(d) *Principal Investigator.* The principal investigator is primarily responsible for achieving the technical success of the project, while also complying with the financial and administrative policies and regulations associated with the grant. Although principal investigators may have administrative staff to assist them with the management of the project, the ultimate responsibility for the management of the project rests with the principal investigator. The principal investigator of a recipient organization could include the Executive Director, WBC Program Director, President/CEO, or other key position.

§ 131.350 Selection and Retention of the WBC Program Director.

(a) *General.* (1) The WBC Program Director selected to manage the daily operations of the WBC shall possess core competencies in the areas of business and/or entrepreneurship training, project and/or small business management, effective communication, and collaboration skills.

(2) The recipient organization must provide written notification to the local

SBA district office and AA/OWBO within 10 business days following a vacancy in a WBC Program Director position. This position may not be vacant more than 30 calendar days a new WBC Program Director should be in place within 90 days of the vacancy. Hiring a new WBC Program Director prior approval from the SBA. See 2 CFR 200.308.

(3) Within 30 days of the position becoming vacant, the recipient organization must appoint an Interim Program Director to serve during the period of the vacancy. The recipient organization must document the appointment of the Interim Program Director in accordance with its policies and procedures and the cooperative agreement.

(4) The recipient organization must provide the name, qualifications and contact information for the Interim WBC Program Director to the SBA district office and the AA/OWBO within 10 days of the appointment.

(5) An Interim Program Director must allocate his/her time and effort solely to the WBC program until a permanent WBC Program Director is in position.

(6) If it is anticipated that the Interim Program Director will be in the position for more than 60 days, the recipient organization must submit a key personnel change request to the district office and the AA/OWBO for prior approval.

(7) The recipient organization must submit a request for a key personnel change (including the resume of the candidate) to the local SBA district office within the timeframe specified in the notice of award prior to hiring a new WBC Program Director. This should be completed within the 90 days allotted to fill the vacancy. Failure to comply with this section may subject the recipient organization to corrective actions, restrictions, disallowances, suspension, revocation or termination proceedings.

(b) *SBA Involvement.* (1) SBA employees may not recruit or hire the WBC Program Director; however; the AA/Office of Women's Business Ownership will review the key personnel change request submitted by the recipient organization and recommendation provided by the SBA district office technical representative to ensure that the candidate has the qualifications necessary to manage the day-to-day operations of the WBC. Prior to hiring a new WBC Program Director, the recipient organization must notify and provide the district office technical representative with a complete key personnel change request, including the credentials of the preferred candidate. The district office technical representative will evaluate the request to determine whether that individual meets the requirements necessary for the position and will then forward the request to the AA/OWBO with his/her concurrence or objection to the selection. If the district office technical representative objects to the selection of the WBC Program Director candidate, he/she must provide a written copy of the objection to the recipient organization and also to the AA/OWBO and OWBO Program Manager within 10 business days of receipt of the key personnel change request. The objection must set forth the relevant selection criteria that the district office technical representative believes the candidate fails to meet.

(2) If the AA/OWBO upholds the district office technical representative's objection, he/she must send written justification for the decision to the recipient organization, district office technical representative and OWBO Program Manager. The recipient organization must then proceed to the selection of another candidate. If the AA/OWBO denies the objection, then the AA/OWBO must send written justification for the denial to the recipient organization, district office technical representative and OWBO Program Manager.

(c) *Recruitment Activity and Associated Costs.* Allocable personnel compensation and benefits costs as provided in 2 CFR 200.463.

§ 131.400 Application Procedures.

(a) Each applicant organization seeking a new or renewal grant is required to submit its application electronically to the SBA, via *grants.gov*, as designated in the program announcement.

(b) The selection criteria for new or renewal grants will include, but is not limited to the following:

(1) Expertise of the applicant organization to provide long-term and short-term training and counseling programs, and, most specifically, experience in providing targeted business development services to a distinct population; and,

(2) The ability of the applicant organization to commence the WBC project within 90 days from execution of the cooperative agreement. All other specific criteria will be published in each program announcement issued by the SBA.

(c) As required by 2 CFR 200.205(b), applicant organizations receiving acceptable scores will be further evaluated by OWBO to assess the possible risks they may pose. An assessment of the possible risks posed by an applicant organization will include, but is not limited to, the applicant organization's financial stability, management systems and ability to effectively implement statutory, regulatory and other requirements, as determined by the SBA.

(d) Each WBC within its final option year period is required to submit an application consistent with the date and instructions listed in the program announcement.

§ 131.410 New Applications.

(a) An application for initial funding must follow the format and requirements outlined in the program announcement and set forth in these regulations for initial funding.

(b) All new awards will be made using an open and competitive process. After completion of the review process, the AA/OWBO will make a determination and notify the applicant organization of the final decision.

§ 131.420 Renewal Applications.

(a) Women's Business Centers must comply with the requirements in the annual program announcement and set forth in these regulations to receive consideration of their three year renewal applications. WBCs must have successfully completed an initial five year period or a three year renewal period in order to receive funding under the program announcement. Recipient organizations that have not been renewed and recipient organizations that have been terminated or suspended are not eligible to apply for renewal funds. The recipient organization must submit the complete renewal application to the SBA through the *grants.gov* or other authorized electronic submission process specified in the program announcement.

(b) Significant factors considered in the renewal application review will include, but shall not be limited to:

(1) The applicant organization's continued ability to contribute matching funds;

(2) The quality of prior performance under the cooperative agreement as determined by compliance with projects goals, and outputs/outcomes; and

(3) The results of any examination conducted pursuant to § 131.710(b).

(c) The SBA will review the renewal application for conformity with the program announcement. OWBO staff may request supplemental information and documentation prior to issuing the cooperative agreement.

(d) If the SBA rejects renewal of an existing recipient organization (see due process procedures set forth in

§ 131.830) or the recipient organization elects not to reapply, the SBA may award the funds elsewhere, as the agency deems appropriate.

§ 131.430 Application Decisions.

The AA/OWBO may approve, conditionally approve, or reject any initial or renewal Application.

(a) *Approval.* Upon approval, the OWBO grants management specialist will issue a notice of award.

(b) *Conditional Approval.* (1) If the AA/OWBO determines there is a reasonable basis to believe the applicant organization will take remedial action to correct any issues identified or respond to an enforcement action in a timely way, the AA/OWBO may conditionally approve an application. The conditions and applicable remedies will be specified as special terms and conditions in the cooperative agreement (notice of award). Upon conditional approval, the OWBO grants management specialist will issue a cooperative agreement.

(2) In the event of a conditional approval, SBA may fund a recipient organization for one or more specified periods of time up to a maximum of 90 days.

(c) *Rejection.* The AA/OWBO may reject any application for initial awards. For renewal awards, the AA/OWBO may reject any application after following due process procedures set forth in § 131.830.

§ 131.500 Grant Administration and Cost Principles.

Upon approval of the WBC's initial or renewal application, the SBA will enter into a cooperative agreement with the recipient organization, setting forth the programmatic and fiscal responsibilities of the recipient organization and SBA, the scope of the project to be funded, and the budget for the period covered by the cooperative agreement. The WBC program adopts and implements Office of Management and Budget regulations as published and amended in 2 CFR part 200. Additional qualifications or clarifications may be promulgated through the program announcement, a revised notice of award or the regulatory process.

§ 131.510 Maximum Grant.

No individual WBC project will receive a WBC grant, in any fiscal year under a cooperative agreement, in excess of the amount authorized by statute. While an individual WBC project cannot exceed the statutory limit, a recipient organization is not limited from establishing multiple WBC projects as long as the projects are distinct from each other and are serving distinct populations that would not otherwise be served.

§ 131.520 Carryover of Federal funds.

Only a WBC in the first or second year of an initial phase project may request permission to carry over any unexpended funds remaining under its award.

(a) Such a recipient organization may request that the SBA reauthorize any remaining unexpended and unobligated Federal funds from their cooperative agreement for use in the subsequent program year/period of performance. All carryover requests must be completed within 90 days after the end of the budget period identified in block 5 of the notice of award or page 2 of the modification of the award. The request must be submitted in writing to OWBO with the final semi-annual financial report and reimbursement request package. If the carryover request is not submitted within this timeframe, OWBO may elect to de-obligate all remaining Federal funds and the funds will no longer be available to the recipient organization.

(b) The AA/OWBO will determine the funding priorities for the awarding of carryover funds. Notification of the approval of carryover funds will be provided in writing by modification to the award.

(c) Carryover funds must be used in accordance with the approved option year work plan and budget. Furthermore, expenditures of carryover funds must not be commingled with current year WBC project funds or other non-WBC funds, and must be reported separately from the current year award.

(d) Any organization that requests carryover funds for two consecutive budget periods will be subject to a reduction of the next budget period. The award amount for the next budget period available will be reduced by the average amount of the two consecutive carryover amounts.

§ 131.530 Matching Funds.

(a) The recipient organization must provide matching funds equal to one-half of the Federal amount of SBA funding for the first two years of its initial award. For the remainder of the time the recipient organization is in the WBC program, it must provide matching funds of one dollar for every Federal dollar of their annual Federal award amount. The statutory match ratio is 2:1 (Federal to non-Federal) for the first and second years and 1:1 for the third, fourth, and fifth years. At least 50% of the matching funds must be in cash (the sum of cash and program income). The remaining 50 percent may be provided through allowable combinations of cash, In-kind contributions (third party), or authorized indirect costs.

Once the cash match and total match requirements have been met, any additional matching funds are considered overmatch. WBCs may provide overmatch if they choose to do so; however, if they have used Federal funds to raise match above the required amount, these funds must only be used to meet the Federal objective of the WBC program and must be verifiable from the non-Federal entity's records. When applied to a WBC project through a budget proposal, all funds for use by the WBC for the budget period are subject to Federal rules and regulations, consistent with 2 CFR part 200. This does not prohibit WBC recipient organizations from raising funds separate and apart from the WBC program. Those funds that are not used as match and are not raised with WBC funds are not subject to the same recordkeeping requirements as they are not tied to the WBC Program.

(b) If the recipient organization indicates difficultly in meeting the match requirement, it can request a reduction of the Federal award.

(c) All sources of matching funds must be identified as specifically as possible with supporting documentation. Cash sources must be identified by name, amount, and account. Any additional requirements, specifications, or deliverables must be clearly identified in the budget narrative.

(d) All applicant organizations must submit a certification of cash match and program income. This certification must be executed by an authorized official of the recipient organization and the WBC Program Director.

(e) All matching funds, in addition to the Federal and program income funds, must be under the direct management of the WBC Program Director.

(f) Program income generated by the WBC may be used as matching funds. All WBC program income must be accounted for within the WBC's semi-annual financial reports (unless otherwise specified in the cooperative agreement) and the WBC's general ledger as validation for the district office technical representative's mid-year and year-end review.

(g) The Grants Management Specialist will determine whether matching funds and cash match set forth in the budget proposal are sufficient to recommend the proposal for funding.

(h) When applied to a WBC project through a budget proposal, all funds for use by the WBC for the budget period

are subject to Federal rules and regulations and must be used solely for the WBC project.

(i) The following will not be considered as sources of matching funds for the WBC:

(1) Uncompensated student labor;

(2) SCORE, SBA, or other SBA resource partners;

(3) Federal funds other than Community Development Block Grant (CDBG) funds. CDBG funds may be used to match WBC grants where the WBC project activities are consistent with the authorized CDBG activities, and are identified either in the consolidated plan of the CDBG grantee or in the agreement between the CDBG grantee and the WBC recipient of the funds;

(4) Funds, in-kind contributions (third party), or indirect costs used as match for other programs, not solely dedicated to the WBC program, or under its control; and

(5) Funds or other resources provided for an agreed upon scope of work inconsistent with the authorized activities of the WBC program.

§ 131.540 Program Income and Fees.

(a) Program income, including any interest earned on program income, may only be used for authorized purposes and in accordance with the cooperative agreement. Program income may be used as matching funds and, when expended, is counted towards the cash match requirement of the award. Program income must be used to expand the quantity or quality of services, and for resources or outreach provided by the WBC project.

(b) Unused program income may be carried over to the subsequent budget period by the WBC. The WBC must report the consolidated program income sources and uses.

(c) A WBC may charge clients a reasonable fee for services, including items such as the costs of training and counseling provided by the WBC (sponsored or cosponsored), the sale of books, and the rental of equipment or space. Any fees so generated will constitute program income, and such fees must not restrict access to any services for economically disadvantaged entrepreneurs.

§ 131.550 Budget Justification.

(a) *General.* The WBC Program Director or non-federal entity finance person will prepare and submit the budget justification for the upcoming program/budget period for review by the SBA as part of its application package pursuant to the applicable program announcement. Worksheets are provided by the Office of Women's Business Ownership for this purpose.

(b) *Audit Expenses.* Audit expenses may not be charged to the grant as a direct (Federal or non-Federal) expense. Audit expenses may only be charged as an indirect expense. See 2 CFR 200.425.

(c) *Indirect Costs.* If the budget includes indirect costs and the recipient organization has never had an approved indirect rate agreement issued by the cognizant agency for indirect costs, the recipient organization may utilize a *de minimis* rate of 10 percent of modified total direct cost (to include Federal and non-Federal) indefinitely or until the recipient organization chooses to negotiate for a rate, which it may apply to do at any time through its cognizant agency for audit. This rule does not apply to organizations that have an expired indirect cost rate agreement. See 2 CFR 200.414. If the Applicant or recipient organization waives all indirect costs, then 100 percent of the project funds must be allocated to program delivery. The recipient organization may then count any indirect costs to which it would otherwise have been entitled as matching contributions.

(d) *Option Year Work Plan and Budgets.* (1) In Its proposal, the recipient organization will include its budget estimate of Federal funds needed for the balance of the project period using the SF–424A, Section E, as indicated by the specific program announcement.

(e) *Salaries.* (1) Salaries for WBC Program Directors should be comparable with salaries paid to individuals in similar positions in other states or regions with similarly-sized programs, responsibilities, and authority.

(2) Salaries for all other positions within the WBC should be based upon level of responsibility, and should be comparable to salaries for similar positions in the area served by the WBC.

(f) *Equipment.* In accordance with SBA policy, expenditures for equipment are not a permitted expense under the WBC project. Equipment is defined as any item of valued at $5000 or more. See 2 CFR 200.33.

(g) *Travel.* (1) All travel must be separately identified in the proposed budget under the following categories: planned travel within the area of service and planned travel outside of the area of service. Travel outside of the WBC area of service is considered a distance beyond 50 miles of the stated area of service proposed in the recipient organization's annual budget submission, as defined in 2 CFR 200.474.

(2) Transportation costs must be justified in writing, including the estimated cost, purpose of travel, number of persons traveling, and the benefit to be derived by the small business community from the proposed travel.

(3) A request to include any travel outside of the WBC's area of service that was not included in the approved budget must be submitted to SBA through the district office technical representative for OWBO prior approval on a case-by-case basis.

§ 131.560 Restricted and Prohibited Costs.

SBA prohibitions are consistent with those set forth in 2 CFR part 200.

(a) A WBC may not use project funds as collateral for a loan, assign an interest in them, or use them for any other such monetary purpose.

Project funds found to be used in violation of these restrictions may be cause for termination, suspension, or non-renewal of the cooperative agreement.

§ 131.570 Payments and Reimbursements.

(a) Advancement and reimbursement of Federal funds to WBCs from the SBA are accomplished electronically. Detailed instructions for the WBCs will be included in the annual cooperative agreement.

(b) Advancement and reimbursement requests allow for quarterly draw down of funds required to meet the estimated or actual quarterly Federal share of WBC expenses.

(c) For guidance regarding interest earned on advances of Federal funds, See 2 CFR 200.305 (b)(7) through (9).

(d) If there is a determination that an overpayment of Federal funds to a WBC has been made, the overpayment amount will be due and payable to the agency within 30 days of written notice to the WBC.

§ 131.600 Reports.

(a) *General.* The recipient organization will submit consolidated performance and financial reports for the WBC to the SBA for review. These reports will reflect actual WBC activity and accomplishments pertinent to the budget periods. Report formats and proper recipients will be specified in the annual program announcement and cooperative agreement.

(b) *Frequency.*

In each budget period and unless otherwise instructed in correspondence from the Office of Women's Business Ownership, the recipient organization of the WBC project must submit semi-annual programmatic and financial reports no later than 30 calendar days after each six-month reporting period, as specified in the program announcement.

(c) *Electronic Data Reports.* Unless otherwise instructed in correspondence from the Office of Women's Business Ownership, and consistent with the notice of award, WBC Program Directors are responsible for reporting counseling and training records in the format and frequency designated in the program announcement. WBC Program Directors must ensure that the required data is submitted to SBA within the timeframe stipulated by the cooperative agreement and that the data is accurate and complete.

(d) *Performance Reports.* (1) The semi-annual performance report shall address, in a brief narrative, the WBC's major activities and objectives achieved during the six-month period. The reports must include a discussion on the progress toward achieving those objectives submitted in its proposal.

(2) The final performance report must also include a brief overall summary of effort expended to deliver the core services in the cooperative agreement for the full budget period. A discussion of performance measurements achieved as well as an explanation of those objectives or measurements not met should be included. The performance report should include a brief summary of the activities, events or achievements by reportable category with an accompanying management analysis.

(e) *Financial Reports.* The recipient organization must provide all semi-annual financial reports to SBA as required by the program announcement, the cooperative agreement and in accordance with 2 CFR part 200. These reports must have the signatures of both the WBC Program Director and the recipient organization's financial representative. To ensure that expenditures are proper and in accordance with the terms and conditions of the notice of award and approved project budgets, final fiscal reports or requests for payment under the cooperative agreement must include the certification required by 2 CFR 200.415.

§ 131.700 Oversight of the WBC Program.

(a) The AA/Office of Women's Business Ownership will monitor the WBC's performance and its ongoing operations under the cooperative agreement to determine if the WBC is making effective and efficient use of program funds, in compliance with applicable law and other requirements, for the benefit of the small business community.

(b) The AA/Office of Women's Business Ownership may revoke delegated authority of oversight responsibilities at any time it is deemed necessary and will notify the recipient organization of such a change in a timely manner.

§ 131.710 SBA Review Authority.

Site Reviews/Visits. The SBA district office, or a contractor on its behalf, will coordinate with, and provide written notice to the WBC Program Director that biannual periodic programmatic and financial reviews/visits to the recipient organization will be conducted. The SBA's district office personnel will inspect WBC records and client files to analyze and assess WBC activities, and, if necessary, to make recommendations for improved service delivery. In addition, the SBA Office of Women's Business Ownership, or a contractor on its behalf, may conduct periodic site reviews.

§ 131.720 Audits, Examinations and Investigations.

(a) *General Audits.* The SBA may conduct WBC audits. (1) Audits of a recipient organization will be conducted pursuant to the Single Audit Act of 1984 (if applicable) and applicable Office of Management and Budget circulars.

(2) The SBA Office of Inspector General or its agents may inspect, audit, investigate or otherwise review the WBC as the Inspector General deems appropriate.''

(b) *Financial Examinations.* The WBC will have periodic financial examinations conducted by either the SBA or an independent contracted firm. WBCs, in accordance with the program announcement and the cooperative agreement, must comply with all requirements set forth for such purposes. (1) *Post-Award Examination.* Applicant organizations proposing to enter the WBC program for the first time shall be subject to a post-award examination or sufficiency review conducted by or coordinated with the SBA Financial Examination Unit or designee. As part of the financial examination, the financial examiner will verify the adequacy of the accounting system, the suitability of proposed costs and the nature and sources of proposed matching funds.

(2) The examinations by the SBA will not serve as a substitute for audits required of Federal recipients under the Single Audit Act of 1984, 31 U.S.C Chapter 75 or applicable Office of Management and Budget guidelines (see 2 CFR part 200), nor will such internal reviews serve as a substitute for audits to be conducted by the SBA Office of the Inspector General under authority of the Inspector General Act of 1978, as amended.

(c) *Investigations.* SBA may conduct investigations to determine whether any person or entity has engaged in acts or practices constituting a violation of the Small Business Act, 15 U.S.C. 656, any rule, order or regulation, or any other applicable Federal law.

(d) *Audited Financial Statements.* Audited financial statements shall be required of all WBCs in a new initial phase period of performance. Thereafter, the SBA reserves the right to require a recipient organization to submit audited financial statements as a condition of a cooperative agreement when the results of a financial or programmatic examination demonstrate significant financial issues or significant internal control issues.

§ 131.800 Cooperative Agreement and Contracts.

(a) *General.* A recipient organization will incorporate into its WBC the applicable provisions of the cooperative agreement.

(b) *Goals and Milestones.* (1) The SBA district office and the WBC Program Director will negotiate the goals, milestones, and activities for the cooperative agreement annually. Agency loan goals may not be negotiated or incorporated into the cooperative agreement without the prior written approval of the SBA Administrator.

(2) Failing to meet the goals and milestones of the cooperative agreement may result in suspension, termination, non-renewal in accordance with § 131.830.

(c) *Procurement Policies and Procedures.* (1) The WBC may contract out for certain functions as permitted by the terms and conditions of the cooperative agreement, but may not expend more than 49 percent of the total project funds on contractors and consultants in conducting the project.

(2) The SBA may direct or otherwise approve any obligations or expenditures by recipient organizations, including those related to vendors or contractors, as deemed appropriate by the agency.

§ 131.810 Other Federal Grants.

(a) *Grants from Other Agencies.* A recipient organization may enter into a contract or grant with another Federal department or agency to provide specific assistance to small business concerns in accordance with the following conditions:

(1) Any additional contract or grant funds obtained from a Federal source may not be used as matching funds for the WBC project, with the exception of Community Development Block Grant funds.

(2) Federal funds from the SBA and match expenditures reported to the SBA

under the cooperative agreement may not be used or reported as match for another Federal program.

(3) The SBA does not impose any requirements for additional matching funds for those recipient organizations managing other Federal contracts.

(4) The WBC must report these other Federal funds and any associated matching funds separately to the SBA.

(b) *RISE After Disaster Grants.* In accordance with 15 U.S.C. 636(b)(12), SBA may provide financial assistance to a Women's Business Center, Small Business Development Center under 13 CFR part 130, SCORE, or any proposed consortium of such individuals or entities to spur disaster recovery and growth of small business concerns located in an area for which the President has declared a major disaster. (1) The Administrator, in cooperation with the recipients of financial assistance under this paragraph shall establish metrics and goals for performance of grants, contracts, and cooperative agreements under this paragraph, which shall include recovery of sales, recovery of employment, reestablishment of business premises and establishment of new small-business concerns.

(2) Matching funds are not required for any grant, contract or cooperative agreement under this paragraph. (See section 7(b) of the Small Business Act 15 U.S.C. 636 (b)).

§ 131.820 Revisions and Amendments to Cooperative Agreements.

Requests for Revisions. During a project period, the WBC may request, in writing, one or more revisions to the cooperative agreement. The request must be submitted by the recipient organization's authorized official. Revisions will normally relate to changes in scope, work or funding during the specified budget period. No proposed revision will be implemented without the prior approval from the Office of Women's Business Ownership Grants Management Officer. Revisions that require an amendment include the prior approval items listed in 2 CFR 200.308 and 200.407.

§ 131.830 Suspension, Termination, and Non-renewal.

(a) General. After entering into a cooperative agreement with a recipient organization, the SBA may take, as it deems appropriate, any of the following enforcement actions based upon one or more of the circumstances listed in (b) below:

(1) Suspension. The SBA may suspend a cooperative agreement with a recipient organization at any point. A decision to suspend a cooperative agreement with a recipient organization is effective immediately as of the date of the notice of suspension. The period of suspension will begin on the date of the notice of suspension and will last no longer than 6 months. At the end of the period of suspension, or at any point during that period, the SBA will either reinstate the cooperative agreement or commence an action for termination or non-renewal.

The notice of suspension will recommend that the recipient organization cease work on the project immediately. The SBA is under no obligation to reimburse any expenses incurred by a recipient organization while its cooperative agreement is under suspension. Where the SBA decides to lift a suspension and reinstate a recipient organization's cooperative agreement, the agency may, at its discretion, choose to make funds available to reimburse a recipient organization for some or all of the expenses it incurred in furtherance of project objectives during the period of suspension. However, there is no guarantee that the agency will elect to accept such expenses and recipient organizations incurring expenses while under suspension do so at their own risk.

(2) Termination. The SBA may terminate a cooperative agreement with a recipient organization at any point. A decision to terminate a cooperative agreement is effective immediately as of the date of the notice of termination. A recipient organization may not incur further obligations under the cooperative agreement after the date of termination unless it has been expressly authorized to do so in the notice of termination.

Funds remaining under the cooperative agreement may be made available by the SBA to satisfy financial obligations properly incurred by the recipient organization prior to the date of termination. Award funds will not be available for obligations incurred subsequent to the effective date of termination unless expressly authorized under the notice of termination. A recipient organization that has had its cooperative agreement terminated will have 90 days to submit final closeout documents as instructed by the SBA.

(3) Non-Renewal. The SBA may elect not to renew a cooperative agreement with a recipient organization at any point. In undertaking a non-renewal action, the SBA may either decline to accept or consider any application for renewal the organization submits, or the agency may decline to exercise any option years remaining under the cooperative agreement. A recipient organization that has had its cooperative agreement non-renewed may continue to conduct project activities and incur allowable expenses until the end of the current budget period.

Funds remaining under a non-renewed cooperative agreement may be utilized to satisfy financial obligations the recipient organization properly incurred prior to the end of the budget period. Award funds will not be available for obligations incurred subsequent to the end of the current budget period. A recipient organization that has had its cooperative agreement non-renewed will have until the end of the current budget period or 120 days, whichever is longer, to conclude its operations and submit close-out documents as instructed by the SBA.

(b) Causes. The SBA may suspend, terminate, or not renew a cooperative agreement with a recipient organization for cause. Cause may include, but is not limited to, the following:

(1) Non-performance;

(2) Poor performance;

(3) Unwillingness or inability to implement changes to improve performance;

(4) Willful or material failure to comply with the terms of the cooperative agreement, including relevant OMB circulars;

(5) Conduct reflecting a lack of business integrity or honesty on the part of the recipient organization, the WBC Program Director, or other significant employee(s), which has not been properly addressed;

(6) A conflict of interest on the part of the recipient organization, the WBC Program Director, or other significant employees causing real or perceived detriment to a small business concern, a contractor, the WBC or the SBA;

(7) Improper use of federal funds;

(8) Failure of a WBC to consent to audits, examinations, or to maintain required documents or records;

(9) Failure to implement recommendations from the audits or examinations within 30 days of their receipt;

(10) Failure of the WBC Program Director to work at the WBC on a 100 percent full-time basis on the WBC project;

(11) Failure to promptly suspend or terminate the employment of a WBC Program Director, or other significant employee upon receipt of knowledge or written information by the recipient organization and/or the SBA indicating that such individual has engaged in conduct which may result or has resulted in a criminal conviction or civil judgment which would cause the public

to question the WBC's integrity. In making the decision to suspend or terminate such an employee, the recipient organization must consider such factors as the magnitude and repetitiveness of the harm caused and the remoteness in time of the behavior underlying any conviction or judgment;

(12) Failure to maintain adequate client service facilities or service hours;

(13) Any other action that the SBA believes materially and adversely affects the operation or integrity of a WBC or the WBC program.

(c) *Procedures.* The same procedures will apply regardless of whether a cooperative agreement with a recipient organization is being suspended, terminated or non-renewed by the SBA. (1) *Taking Action.* When the Office of Women's Business Ownership has reason to believe there is cause to suspend, terminate or non-renew a cooperative agreement with a recipient organization (either based on its own knowledge or upon information provided to it by other parties), the AA/Office of Women's Business Ownership may undertake such an enforcement action by issuing a written notice of suspension, termination, or non-renewal to the recipient organization.

(2) *Notice Requirements.* Each notice of suspension, termination, or non-renewal will set forth the specific facts and reasons for the AA/Office of Women's Business Ownership's decision and will include reference to the appropriate legal authority. The notice will also advise the recipient organization that it has the right to request an administrative review of the decision to suspend, terminate or non-renew its cooperative agreement in accordance with the procedures set forth in 131.830 (d). The notice will be transmitted to the recipient organization on the same date it is issued by both U.S. Mail and facsimile or as an email attachment.

(3) *Relationship to Government-Wide Suspension and Debarment.* A decision by the SBA to suspend, terminate or not renew a WBC cooperative agreement does not constitute a nonprocurement suspension or debarment of a recipient organization under E. O. 12549 and SBA's implementing regulations (2 CFR part 2700). However, a decision by the SBA to undertake a suspension, termination, or non-renewal enforcement action with regard to a particular WBC cooperative agreement does not preclude or preempt the agency from also taking action to suspend or debar a recipient organization for purposes of all Federal procurement and/or nonprocurement opportunities.

(d) *Administrative Review.* Any recipient organization that has had its cooperative agreement suspended, terminated, or non-renewed has the right to request an administrative review of the SBA enforcement action. Administrative review of WBC enforcement actions will be conducted by the Associate Administrator for the Office of Entrepreneurial Development (AA/OED). (1) *Format.* There is no prescribed format for a request for administrative review of an SBA enforcement action. While a recipient organization has the right to retain legal counsel to represent its interests in connection with an administrative review, it is under no obligation to do so. Formal briefs and other technical forms of pleading are not required. However, a request for administrative review of an SBA enforcement action must be in writing, should be concise and logically arranged, and must at a minimum include the following information:

(i) Name and address of the recipient organization;

(ii) Identification of the relevant SBA office/program (*i.e.,* Office of Women's Business Ownership/Women's Business Center Program);

(iii) Cooperative agreement number;

(iv) Copy of the notice of suspension, termination, or non-renewal;

(v) Statement regarding why the recipient organization believes the SBA's actions were arbitrary, capricious, an abuse of discretion, and/or otherwise not in accordance with the law;

(vi) Identification of the specific relief being sought (*e.g.,* lifting of the suspension);

(vii) Statement as to whether the recipient organization is requesting a hearing and, if so, the reasons why it believes a hearing is necessary; and

(viii) Copies of any documents or other evidence the recipient organization believes support its position.

(2) *Service.* Any recipient organization requesting administrative review of an SBA enforcement action must submit copies of its request (including any attachments) to all of the following parties:

Associate Administrator for the Office of Entrepreneurial Development, U.S. Small Business Administration, 409 Third St. SW., 6th Floor, Washington, DC 20416. Email: *owbo@sba.gov.*

Assistant Administrator for the Office of Women's Business Ownership, U.S. Small Business Administration, 409 Third St. SW., 6th Floor, Washington, DC 20416. Email: *owbo@sba.gov.*

Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third St. SW., 5th Floor, Washington, DC 20416. Facsimile number: 202–205–6846.

(e) *Timeliness.* In order to be considered timely, the AA/OED must receive a recipient organization's request for administrative review within 30 days of the date of the notice of suspension, termination, or non-renewal. Any request for administrative review received by the AA/OED more than 30 days after the date of the notice of suspension, termination, or non-renewal will be considered untimely and will automatically be rejected without being considered.

In addition, if the AA/OED does not receive a request for administrative review within the 30-day deadline, then the decision by the AA/Office of Women's Business Ownership to suspend, terminate, or non-renew a recipient organization's cooperative agreement will automatically become the final agency decision on the matter.

(f) *Standard of Review.* In order to have the suspension, termination, or non-renewal of a cooperative agreement reversed on administrative review, a recipient organization must successfully demonstrate that the SBA enforcement action was arbitrary, capricious, an abuse of discretion, and/or otherwise not in accordance with the law.

(g) *Conduct of the Proceeding.* Each party must serve the opposing party with copies of all requests, arguments, evidence, and any other filings it submits pursuant to the administrative review. Within 30 days of the AA/OED receiving a request for administrative review, the AA/OED must also receive the SBA's arguments and evidence in defense of its decision to suspend, terminate, or non-renew a recipient organization's cooperative agreement. If the SBA fails to provide its arguments and evidence in a timely manner, the administrative review will be conducted solely on the basis of the information provided by the recipient organization.

After receiving the SBA's response to the request for administrative review or the passage of the 30-day deadline for filing such a response, the AA/OED will take one or more of the following actions, as applicable:

(i) Notify the parties whether she/he has decided to grant a request for a hearing;

(ii) direct the parties to submit further arguments and/or evidence on any issues which she/he believes require clarification;

(iii) notify the parties that she/he has declared the record to be closed and therefore she/he will refuse to admit any further evidence or argument.

The AA/OED will only grant a request for a hearing if she/he concludes that there is a genuine dispute as to a material fact that cannot be resolved except by the taking of testimony and the confrontation of witnesses. If the AA/OED grants a request for a hearing, she/he will set the time and place for the hearing, determine whether the hearing will be conducted in person or via telephone, and identify which witnesses will be permitted to give testimony.

Within 10 calendar days of declaring the record to be closed, the AA/OED will provide all parties with a copy of her/his written decision on the merits of the administrative review.

(h) *Evidence.* The recipient organization and the SBA each have the right to submit whatever evidence they believe is relevant to the matter in dispute. No form of discovery will be permitted unless a party has made a substantial showing, based upon credible evidence and not mere allegation that the other party has acted in bad faith or engaged in improper behavior.

(i) *Decision.* The decision of the AA/Office of Entrepreneurial Development will be effective immediately as of the date it is issued. The decision of the AA/OED will represent the final agency decision on all matters in dispute on administrative review. No further relief may be sought from or granted by the agency. If the AA/OED determines that the SBA's decision to suspend, terminate, or non-renew a cooperative agreement was arbitrary, capricious, an abuse of discretion, and/or otherwise not in accordance with the law, she/he will reverse the agency's enforcement action and direct the SBA to reinstate the recipient organization's cooperative agreement.

Where an enforcement action has been reversed on administrative review, the SBA will have no more than 10 calendar days to implement the AA/OED's decision. However, to the extent permitted under the applicable OMB circulars, the SBA reserves the right to impose such special conditions in the recipient organization's cooperative agreement as it deems necessary to protect the government's interests.

§ 131.840 Dispute Procedures.

(a) *Financial and Programmatic Disputes.* (1) A recipient organization wishing to resolve a dispute regarding a financial or programmatic matter other than suspension, termination, or non-renewal of its award must submit a written statement describing the subject of the dispute, along with any relevant documentation, to the Chairman of the Grants Appeal Committee.

(2) If the recipient organization receives an unfavorable decision from the SBA, it may file an appeal with the AA/OED within 30 calendar days from receipt of the decision.

(3) The AA/Office of Entrepreneurial Development may request additional information or documentation from the recipient organization at any stage of the proceedings. The response to the request for additional information must be provided, in writing, to the AA/OED within 15 calendar days of receipt of the request. The AA/OED will transmit a written decision to the recipient organization within 15 calendar days of receipt of the appeal, or within 15 calendar days of receipt of additional information requested.

(4) If the recipient organization receives an unfavorable decision from the AA/OED, it may make a final appeal to the SBA Grants and Cooperative Agreements Appeals Committee (the ''committee''). The final appeal to the committee must be filed within 30 calendar days of the date of receipt of the AA/Office of Entrepreneurial Development's written decision. Copies of the appeal must also be sent to the AA/Office of Women's Business Ownership and the OWBO grants management specialist. If the recipient organization elects not to file an appeal with the committee, the decision of the AA/Office of Entrepreneurial Development becomes the final decision. (See paragraph (a)(3) of this section).

(5) Requests for an appeal before the committee will not be granted unless the agency determines there are substantial material facts in dispute. Legal briefs and other technical forms of pleading are not required. Final appeals must be in writing and contain all of the following:

(i) Name and address of the recipient organization;

(ii) Name and address of the appropriate SBA district office(s);

(iii) The cooperative agreement number, including amendments;

(iv) A statement of the grounds for appeal, with reasons why the appeal should be sustained;

(v) The specific relief desired on appeal; and

(vi) If an appeal is requested, a statement of the material facts that are substantially in dispute.

(6) The committee may request additional information or documentation from the recipient organization at any stage in the proceedings. The recipient organization's response to the committee's request for additional information or documentation must be submitted, in writing, to the committee within 15 calendar days of receipt of the request. In the event that the recipient organization fails to follow the procedures specified in paragraph (a)(5) of this section, the committee may dismiss the appeal by a written order.

(7) If a request for an appeal is granted, the committee will provide the recipient organization with written instructions, and will afford the parties an opportunity to present their positions to the committee in writing.

(8) The chairperson of the committee, with advice from the SBA Office of General Counsel, will issue a final written decision within 30 calendar days of receipt of all information or inform the recipient organization that additional time to issue a decision is necessary. A copy of the decision will be transmitted to the recipient organization, with copies to the AA/Office of Women's Business Ownership, the grants management specialist, and the SBA district office.

(9) At any time within 120 days of the end of the budget period, the recipient organization may submit a written request to use an expedited dispute appeal process. The committee, by an affirmative vote of a majority of its total membership, may expedite the appeals process to attain final resolution of a dispute before the issuance date of a new cooperative agreement.

§ 131.850 Closeout procedures.

(a) *General.* Closeout procedures are used to ensure that the WBC program funds and property acquired or developed under the WBC cooperative agreement are fully reconciled and transferred seamlessly between the recipient organization and other Federal programs. The responsibility of conducting closeout procedures is vested with the recipient organization whose cooperative agreement is being relinquished, terminated, non-renewed or suspended.

(b) *Responsibilities.* (1) *Recipient Organizations.* When a WBC cooperative agreement is not being renewed or a WBC is terminated, regardless of cause, the recipient organization will address the following in their closeout process and perform the necessary inventories and reconciliations prior to submitting the final annual financial report.

(i) An inventory of WBC property must be compiled, evaluated, and all property and the aggregate of usable supplies and materials accounted for in this inventory.

(ii) Program income balances will be reconciled and unused WBC program income which is not used as match or cannot otherwise be used to offset legitimate expenditures of the WBC, must be returned to SBA.

(iii) Client counseling and training records, paper and electronic, will be compiled to facilitate an SBA program closeout review.

(iv) Financial records will be compiled to facilitate a closeout of the SBA financial examination.

(2) *SBA.* Upon receipt of the final annual financial report from a non-renewing or terminated recipient organization, the AA/OWBO will issue disposition instructions to the former recipient organization.

(c) *Final disposition.* (1) The final financial status report from the recipient organization must include the information identified in the inventory process and identify any WBC program income collected for services provided.

(2) The AA/OWBO will issue written disposition instructions to the recipient organization providing:

(i) The name and address of the entity or agency to which property and program income must be transferred;

(ii) A date by which the transfer must be completed;

(iii) Actions to be taken regarding property and WBC program income;

(iv) Actions to be taken regarding WBC program records such as client and training files; and

(v) Authorization to incur costs for accomplishing the transfer. Such costs may, when authorized, be applied to residual WBC program income, or Federal or matching funds.

§ 131.900 Ensuring Client Privacy.

(a) Women's Business Centers, including their contractors and other agents, are not permitted to disclose the name, address, or telephone number of individuals or small businesses that obtain any type of assistance from the program, hereafter referred to as ''client contact data,'' to any person or entity other than the WBC, without the consent of the Client, except in instances where:

(1) Court orders require the Administrator to do so in any civil or criminal enforcement action initiated by a Federal or State agency;

(2) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a center, not including those required under section 130.830, as determined on a case-by-case basis when formal requests are made by a Federal or State agency. Such formal requests must justify and document the need for individual client contact and/or program activity data to the satisfaction of the Administrator;

(3) the agency requires client contact data to directly survey WBC clients.

(b) Women's Business Centers must provide an opportunity for a client to opt-in to allow the SBA to obtain client contact data. The SBA may use the permitted client contact data only to conduct surveys and studies that help stakeholders better understand how the services the client received affect their business outcomes over time. These studies would include, but not be limited to:

(1) Program evaluation and performance management studies;

(2) Measuring the effect and economic or other impact of agency programs;

(3) Assessing public and WBC partner needs;

(4) Measuring customer satisfaction;

(5) Guiding program policy development;

(6) Improving grant-making processes; and

(7) Other areas the SBA determines would be valuable to strengthen the WBC program and/or enhance support for WBC clients.

(c) Women's Business Centers may not deny access to services to clients solely based on their refusal to provide consent as referenced in this section.

(d) All data collections will adhere to 5 CFR 1320. The collection standards and oversight will be coordinated with SBA Office of General Counsel and approved by OMB in compliance with the Paperwork Reduction Act. That process is designed to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated.

(e) Any reports or studies on program activity produced by the Administrator and/or a WBC, including its contractors and other agents, may not disseminate client contact data and must only report data in the aggregate. Individual client contact data will not be disclosed in any way that could individually identify a client.

(f) The Administrator and the WBC, including its contractors and other agents, must obtain consent from the client prior to publishing media or reports that identify an individual client.

(g) This section does not restrict the agency in any way from access and use of program performance data.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–27376 Filed 11–21–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No.FAA–2016–9409; Notice No. 23–16–03–SC]

Special Conditions: Cranfield Aerospace Limited, Cessna Aircraft Company Model 525; Tamarack Load Alleviation System and Cranfield Winglets—Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Cessna Aircraft Company model 525 airplane. This airplane as modified by Cranfield Aerospace Limited will have a novel or unusual design features associated with the installation of a Tamarack Active Technology Load Alleviation System and Cranfield Winglets. These design features will include winglets and an Active Technology Load Alleviation System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before December 22, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–9409 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://regulations.gov,* including any personal information the commenter provides. Using the search function of

the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov*.

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

FOR FURTHER INFORMATION CONTACT: Mike Reyer, Continued Operational Safety, ACE–113, Small Airplane Directorate, Aircraft Certification Service, 901 Locust; Kansas City, Missouri 64106; telephone (816) 329–4131; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

Background

On January 25, 2016, Cranfield Aerospace Limited (CAL) applied for a supplemental type certificate to install winglets on the Cessna Aircraft Company (Cessna) model 525. The Cessna model 525 twin turbofan engine airplane is certified in the normal category for eight seats, including a pilot, a maximum gross weight of 10,700 pounds, and a maximum altitude of 41,000 feet mean sea level.

Special conditions have been applied on past 14 CFR part 25 airplane programs in order to consider the effects on systems on structures. The regulatory authorities and industry developed standardized criteria in the Aviation Rulemaking Advisory Committee (ARAC) forum based on the criteria defined in Advisory Circular 25.672–1, dated November 15, 1983. The ARAC recommendations have been incorporated in the European Aviation Safety Agency Certification Specifications (CS) 25.302 and CS 25, appendix K. The special conditions used for part 25 airplane programs, can be applied to part 23 airplane programs in order to require consideration of the effects of systems on structures. However, some modifications to the part 25 special conditions are necessary to address differences between parts 23 and 25 as well as differences between parts 91 and 121 operating environments.

Winglets increase aerodynamic efficiency. However, winglets also increase wing design static loads, increase the severity of the wing fatigue spectra, and alter the wing fatigue stress ratio, which under limit gust and maneuvering loads factors, may exceed the certificated wing design limits. The addition of the Tamarack Active Technology Load Alleviation System (ATLAS) mitigates the winglet's adverse structural effects by reducing the aerodynamic effectiveness of the winglet when ATLAS senses gust and maneuver loads above a predetermined threshold.

The ATLAS functions as a load-relief system. This is accomplished by measuring airplane loading via an accelerometer and moving an aileron-like device called a Tamarack Active Control Surface (TACS) that reduces lift at the tip of the wing. The TACS are located outboard and adjacent to the left and right aileron control surfaces. The TACS movement reduces lift at the tip of the wing, resulting in the wing spanwise center of pressure moving inboard, thus reducing bending stresses along the wing span. Because the ATLAS compensates for the increased wing root bending at elevated load factors, the overall effect of this modification is that the required reinforcement of the existing Cessna wing structure due to the winglet installation is reduced. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

The ATLAS is not a primary flight control system, a trim device, or a wing flap. However, several regulations under Part 23, Subpart D—Design and Construction—Control Systems, have applicability to ATLAS, which might otherwise be considered ''Not Applicable'' under a strict interpretation of the regulations. These Control System regulations include §§ 23.672, 23.675, 23.677, 23.681, 23.683, 23.685, 23.693, 23.697, and 23.701.

An airplane designed with a load-relief system must provide a equivalent level of safety to an airplane with similar characteristics designed without a load-relief system. In the following special conditions, an equivalent level of safety is provided by relating the required structural safety factor to the probability of load-relief system failure and the probability of exceeding the frequency of design limit and ultimate loads.

These special conditions address several issues with the operation and failure of the load-relief system. These issues include the structural requirements for the system in the fully operational state; evaluation of the effects of system failure, both at the moment of failure and continued safe flight and landing with the failure annunciated to the pilot; and the potential for failure of the failure monitoring/pilot annunciation function.

The structural requirements for the load-relief system in the fully operational state are stated in special condition 2(e) of these special conditions. In this case, the structure must meet the full requirements of part 23, subparts C and D with full credit given for the effects of the load-relief system.

In the event of a load-relief system failure in-flight, the effects on the structure at the moment of failure must be considered as described in special condition 2(f)(l) of these special conditions. These effects include, but are not limited to the structural loads induced by a hard-over failure of the load-relief control surface and oscillatory system failures that may excite the structural dynamic modes. In evaluating these effects, pilot corrective actions may be considered and the airplane may be assumed to be in 1g (gravitation force) flight prior to the load-relief system failure. These special conditions allows credit, in the form of reduced structural factors of safety, based on the probability of failure of the load-relief system. Effects of an in-flight failure on flutter and fatigue and damage tolerance must also be evaluated.

Following the initial in-flight failure, the airplane must be capable of continued safe flight and landing. Special condition 2(f)(2) in these special conditions assumes that a properly functioning, monitoring, and annunciating system has alerted the pilot to the load-relief failure. Since the pilot has been made aware of the load-relief failure, appropriate flight limitations, including speed restrictions, may be considered when evaluating structural loads, flutter, and fatigue and

damage tolerance. These special conditions allows credit, in the form of reduced structural factors of safety, based on the probability of failure of the load-relief system and the flight time remaining on the failure flight.

Special condition 2(g) of these special conditions addresses the failure of the load-relief system to annunciate a failure to the pilot. These special conditions addresses this concern with maintenance actions and requirements for monitoring and annunciation systems.

These special conditions have been modified from previous, similar part 25 special conditions because of the differences between parts 23 and 25 as well as to address the part 91 operating and maintenance environment. Paragraph (c)(3) of the part 25 special condition [2] is removed from these special conditions. Special condition 2(h) of these special conditions is modified to require a ferry permit for additional flights after an annunciated failure or obvious system failure.

Type Certification Basis

Under the provisions of § 21.101, Cranfield Aerspace Limited must show that the Cessna model 525, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A1WI, revision 24, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A1WI, revision 24 are 14 CFR part 23 effective February 1, 1965, amendments 23–1 through 23–38 and 23–40.

If the Administrator finds the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the Cessna model 525 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the FAA would apply these special conditions to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Cessna 525 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The Cessna model 525 will incorporate the following novel or unusual design features: Cranfield winglets with a Tamarack Active Technology Load Alleviation System.

Discussion

Airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the applicant must take into account the influence of these systems and their failure conditions when showing compliance with the requirements of part 23, subparts C and D.

The applicant must use the following criteria for showing compliance with these special conditions for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, fuel management systems, and other systems that either directly or as a result of failure or malfunction affect structural performance. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

Applicability

As discussed above, these special conditions are applicable to the Cessna model 525. Should Cranfield Aerspace Limited apply at a later date for a supplemental type certificate to modify any other model included on A1WI, revision 24 to incorporate the same novel or unusual design feature, the FAA would apply these special conditions to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Cessna Aircraft Company 525 airplanes modified by Cranfield Aerospace Limited.

1. Active Technology Load Alliviation System (ATLAS)

SC 23.672 Load Alleviation System

The load alleviation system must comply with the following:

(a) A warning, which is clearly distinguishable to the pilot under expected flight conditions without requiring the pilot's attention, must be provided for any failure in the load alleviation system or in any other automatic system that could result in an unsafe condition if the pilot was not aware of the failure. Warning systems must not activate the control system.

(b) The design of the load alleviation system or of any other automatic system must permit initial counteraction of failures without requiring exceptional pilot skill or strength, by either the deactivation of the system or a failed portion thereof, or by overriding the failure by movement of the flight controls in the normal sense.

(1) If deactivation of the system is used to counteract failures, the control for this initial counteraction must be readily accessible to each pilot while operating the control wheel and thrust control levers.

(2) If overriding the failure by movement of the flight controls is used, the override capability must be operationally demonstrated.

(c) It must be shown that, after any single failure of the load alleviation system, the airplane must be safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations that is critical for the type of failure being considered;

(d) It must be shown that, while the system is active or after any single failure of the load alleviation system—

(1) The controllability and maneuverability requirements of part 23, subpart D, are met within a practical operational flight envelope (*e.g.,* speed, altitude, normal acceleration, and airplane configuration) that is described in the Airplane Flight Manual (AFM); and

(2) The trim, stability, and stall characteristics are not impaired below a

[2] Special Condition No. 25–164–SC, ''Boeing Model 737–700 IGW, Interaction of Systems and Structures,'' Effective August 30, 2000 (65 FR 55443).

level needed to permit continued safe flight and landing.

SC 23.677 Load Alleviation Active Control Surface

(a) Proper precautions must be taken to prevent inadvertent or improper operation of the load alleviation system. It must be demonstrated that with the load alleviation system operating throughout its operational range, a pilot of average strength and skill level is able to continue safe flight with no objectionable increased workload.

(b) The load alleviation system must be designed so that, when any one connecting or transmitting element in the primary flight control system fails, adequate control for safe flight and landing is available.

(c) The load alleviation system must be irreversible unless the control surface is properly balanced and has no unsafe flutter characteristics. The system must have adequate rigidity and reliability in the portion of the system from the control surface to the attachment of the irreversible unit to the airplane structure.

(d) It must be demonstrated the airplane is safely controllable and a pilot can perform all maneuvers and operations necessary to effect a safe landing following any load allevation system runaway not shown to be extremely improbable, allowing for appropriate time delay after pilot recognition of the system runaway. The demonstration must be conducted at critical airplane weights and center of gravity positions.

SC 23.683 Operation Tests

(a) It must be shown by operation tests that, when the flight control system and the load alleviation systems are operated and loaded as prescribed in paragraph (c) of this section, the flight control system and load alleviation systems are free from—

(1) Jamming;

(2) Excessive friction; and

(3) Excessive deflection.

(b) The operation tests in paragraph (a) of this section must also show the load alleviation system and associated surfaces do not restrict or prevent aileron control surface movements, or cause any adverse response of the ailerons, under the loading prescribed in paragraph (c) of this section that would prevent continued safe flight and landing.

(c) The prescribed test loads are for the entire load alleviation and flight control systems, loads corresponding to the limit airloads on the appropriate surfaces.

Note: Advisory Circular (AC) 23–17C ''Systems and Equipment Guide to Certification of Part 23 Airplanes'' provides guidance on potential methods of compliance with this section and other regulations applicable to this STC project.

SC 23.685 Control System Details

(a) Each detail of the load alleviation system and related moveable surfaces must be designed and installed to prevent jamming, chafing, and interference from cargo, passengers, loose objects, or the freezing of moisture.

(b) There must be means in the cockpit to prevent the entry of foreign objects into places where they would jam any one connecting or transmitting element of the load alleviation system.

(c) Each element of the load alleviation system must have design features, or must be distinctively and permanently marked, to minimize the possibility of incorrect assembly that could result in malfunctioning of the control system.

SC 23.697 Load Alleviation System Controls

(a) The load alleviation control surface must be designed so that during normal operation, when the surface has been placed in any position, it will not move from that position unless the control is adjusted or is moved by the operation of a load alleviation system.

(b) The rate of movement of the control surface in response to the load alleviation system controls must give satisfactory flight and performance characteristics under steady or changing conditions of airspeed, engine power, attitude, flap configuration, speedbrake position, and during landing gear extension and retraction.

SC 23.701 Load Alleviation System Interconnection

(a) The load alleviation system and related movable surfaces as a system must—

(1) Be synchronized by a mechanical interconnection between the movable surfaces or by an approved equivalent means; or

(2) Be designed so the occurrence of any failure of the system that would result in an unsafe flight characteristic of the airplane is extremely improbable; or

(b) The airplane must be shown to have safe flight characteristics with any combination of extreme positions of individual movable surfaces.

(c) If an interconnection is used in multiengine airplanes, it must be designed to account for unsymmetrical loads resulting from flight with the engines on one side of the plane of symmetry inoperative and the remaining engines at takeoff power. For single-engine airplanes, and multiengine airplanes with no slipstream effects on the load alleviation system, it may be assumed that 100 percent of the critical air load acts on one side and 70 percent on the other.

§§ 23.675, ''Stops;'' 23.681, ''Limit Load Static Tests;'' and 23.693, ''Joints''

The load alleviation system must comply with §§ 23.675, 23.681, and 23.693 as written and no unique special condition will be required for these regulations.

Applicability of Control System Regulations to Other Control Systems

The load alleviation system must comply with §§ 23.675, 23.681, and 23.693 as written and no unique special condition will be required for these regulations.

2. Interaction of Systems and Structures

(a) The criteria defined herein only address the direct structural consequences of the system responses and performances and cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structure whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative mode are not provided in this special condition.

(b) Depending upon the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in this special condition in order to demonstrate the capability of the airplane to meet other realistic conditions such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to this special condition.

(1) *Structural performance:* Capability of the airplane to meet the structural requirements of 14 CFR part 23.

(2) *Flight limitations:* Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (*e.g.,* speed limitations, avoidance of severe weather conditions, etc.).

(3) Reserved.

(4) *Probabilistic terms:* The probabilistic terms (probable, improbable, extremely improbable) used in this special condition are the same as those used in § 23.1309. For the purposes of this special condition, extremely improbable for normal, utility, and acrobatic category airplanes is defined as 10^{-8} per hour. For commuter category airplanes, extremely improbable is defined as 10^{-9} per hour.

(5) *Failure condition:* The term failure condition is the same as that used in § 23.1309, however this special condition applies only to system failure conditions that affect the structural performance of the airplane (*e.g.,* system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins).

(d) *General.* The following criteria (paragraphs (e) through (i)) will be used in determining the influence of a system and its failure conditions on the airplane structure.

(e) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C (or defined by special condition or equivalent level of safety in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 23 (static strength and residual strength for failsafe or damage tolerant structure), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

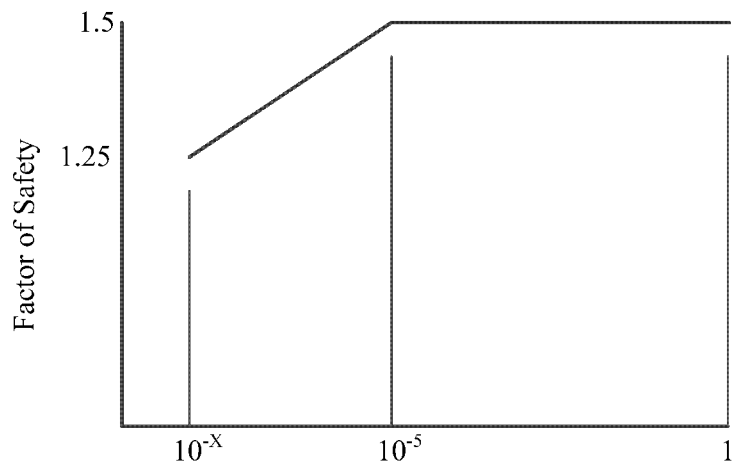
(3) The airplane must meet the aeroelastic stability requirements of § 23.629.

(f) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) *At the time of occurrence.* Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads, multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure, are ultimate loads to be considered for design. The factor of safety is defined in figure 1.

Figure 1—Factor of Safety at the Time of Occurrence



P_j, Probability of occurrence of failure mode j (per hour)

10^{-X} = 10^{-8} for Normal, Utility, and Acrobatic Category Airplanes

= 10^{-9} for Commuter Category Airplanes

(ii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in subparagraph (f)(1)(i).

(iii) For pressurized cabins, these loads must be combined with the normal operating differential pressure.

(iv) Freedom from aeroelastic instability must be shown up to the speeds defined in § 23.629(f). For failure conditions that result in speeds beyond V_D/M_D, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 23.629(f) are maintained.

(v) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) *For the continuation of the flight.* For the airplane, in the system failed state and considering any appropriate

reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions (or defined by special condition or equivalent level of safety in lieu of the following conditions) at speeds up to V_C/M_C, or the speed limitation prescribed for the remainder of the flight, must be determined:

(A) The limit symmetrical maneuvering conditions specified in §§ 23.321, 23.331, 23.333, 23.345, 23.421, 23.423, and 23.445.

(B) The limit gust and turbulence conditions specified in §§ 23.341, 23.345, 23.425, 23.443, and 23.445.

(C) The limit rolling conditions specified in § 23.349 and the limit unsymmetrical conditions specified in §§ 23.347, 23.427, and 23.445.

(D) The limit yaw maneuvering conditions specified in §§ 23.351, 23.441, and 23.445.

(E) The limit ground loading conditions specified in §§ 23.473 and 23.493.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in paragraph (f)(2)(i) of this special condition multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in figure 2.

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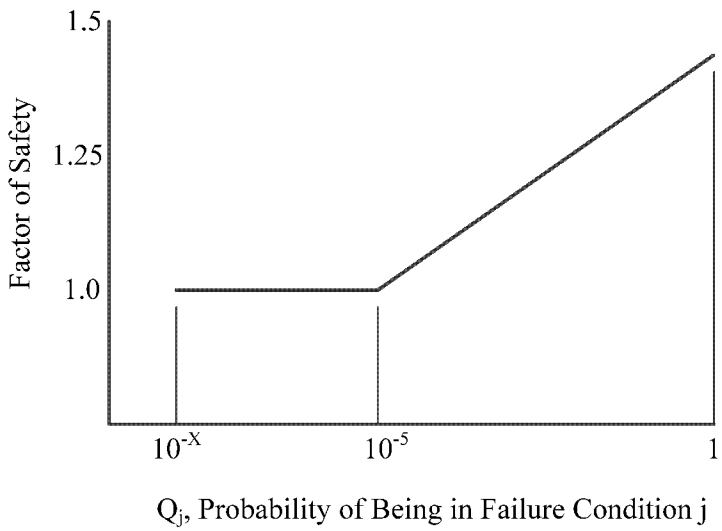
Figure 2—Factor of Safety for Continuation of Flight



10^{-X} = 10^{-8} for Normal, Utility, and Acrobatic Category Airplanes

= 10^{-9} for Commuter Category Airplanes

$Q_j = (T_j)(P_j)$ where:

T_j = Average time spent in failure condition j, hours

P_j = Probability of occurrence of failure mode j, per hour

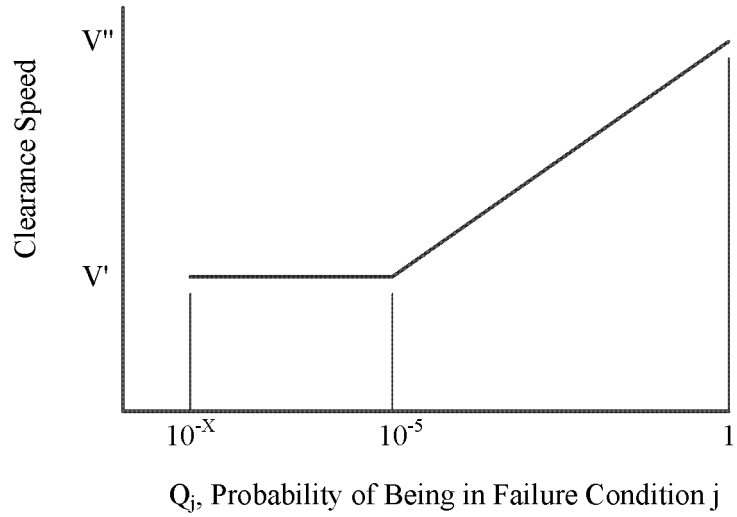
Note: If P_j is greater than 10^{-3} per flight hour then a 1.5 factor of safety must be applied to all limit load conditions specified in part 23 subpart C.

(iii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph (f)(2)(ii) of this special condition. For pressurized cabins, these loads must be combined with the normal operating pressure differential.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 23.629.

Figure 3—Clearance Speed



10^{-X} = 10^{-8} for Normal, Utility, and Acrobatic Category Airplanes

= 10^{-9} for Commuter Category Airplanes

V' = Clearance speed as defined by §23.629(f)
V" = Clearance speed as defined by §23.629(b)

$Q_j = (T_j)(P_j)$ where:
T_j = Average time spent in failure condition j, hours
P_j = Probability of occurrence of failure mode j, per hour

Note: If P_j is greater than 10^{-3} per flight hour then the flutter clearance speed must not be less than V"

(vi) Freedom from aeroelastic instability must also be shown up to V′ in figure 3 above, for any probable system failure condition combined with any damage required or selected for investigation by §§ 23.571 through 23.574.

(3) Consideration of certain failure conditions may be required by other sections of 14 CFR part 23 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-8} for normal, utility, or acrobatic category airplanes or less than 10^{-9} for commuter category airplanes, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(g) *Failure indications.* For system failure detection and indication, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 23 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of detection and indication systems to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal detection and indication systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. The probability of not annunciating these failure conditions must be extremely improbable (unannunciated failure). For example, failure conditions that result in a factor of safety between the airplane strength and the loads of subpart C below 1.25, or flutter margins below V″, must be signaled to the flightcrew during flight.

(h) *Further flights with known load-relief system failure.* Additional flights after an annunciated failure of the load-relief system or obvious failure of the load-relief system are permitted with a ferry permit only. In these cases, ferry permits may be issued to allow moving the airplane to an appropriate maintenance facility. Additional flights are defined as, further flights after landing on a flight where an annunciated or obvious failure of the load-relief system has occurred or after an annunciated or obvious failure of the

load-relief system occurs during preflight preparation.

(i) *Fatigue and damage tolerance.* If any system failure would have a significant effect on the fatigue or damage evaluations required in §§ 23.571 through 23.574, then these effects must be taken into account.

Issued in Kansas City, Missouri, on November 10, 2016.

Mel Johnson,

Acting Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 2016–28016 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No.: FAA–2016–9275; Notice No. 16–07]

RIN 2120–AK91

Rotorcraft Pilot Compartment View; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); Reopening of comment period.

SUMMARY: This action reopens the comment period for an NPRM that was published on October 17, 2016. In that document, the FAA proposed to revise its rules for pilot compartment view to allow ground tests to demonstrate compliance for night operations. The FAA is extending the comment period closing date to allow time to adequately analyze the draft advisory circulars (ACs) associated with the proposed rule and prepare comments.

DATES: The comment period for the NPRM published on October 17, 2016, and closed November 16, 2016, and is reopened until December 13, 2016.

ADDRESSES: You may send comments identified by docket number FAA–2016–9275 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: 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.*

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

FOR FURTHER INFORMATION CONTACT: Thuy H. Cooper, ARM–106, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–4715; email *thuy.cooper@faa.gov.*

SUPPLEMENTARY INFORMATION: See the ''Additional Information'' section for information on how to comment on this proposal and how the FAA will handle comments received. The ''Additional Information'' section also contains related information about the docket, privacy, the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

Background

On October 17, 2016, the FAA issued Notice No. 16–07, entitled ''Rotorcraft Pilot Compartment View'' (81 FR 71415). Comments to that document were to be received on or before November 16, 2016.

The FAA did not post for public comment the draft ACs associated with the NPRM until November 9, 2016.[1] The FAA finds that providing an additional 21 days is sufficient to analyze the draft ACs and provide meaningful comment to Notice No. 16–07.

Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

[1] *See* Docket FAA–2016–9275 and *https://www.faa.gov/aircraft/draft_docs/ac/.*

Extension of Comment Period

The FAA has determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 16–07 is reopened until December 13, 2016.

Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule,

including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on November 14, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

[FR Doc. 2016–27966 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9301; Directorate Identifier 2015–NM–193–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2008–12–04, which applies to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. AD 2008–12–04 currently requires various repetitive inspections to detect cracks along the chem-milled steps of the fuselage skin, and to detect missing or loose fasteners in the area of the preventive modification or repairs, replacement of the time-limited repair with the permanent repair if applicable, and applicable corrective actions, if necessary, which would end certain repetitive inspections. Since we issued AD 2008–12–04, an evaluation by the design approval holder (DAH) has indicated that the upper skin panel at the chem-milled step above the lap joint is subject to widespread fatigue damage (WFD) if the modification was installed after 30,000 total flight cycles. This proposed AD would reduce the post-modification inspection compliance times, limit installation of the preventive modification to airplanes with fewer than 30,000 total flight cycles, and add repetitive inspections for modified airplanes. We are proposing this AD to detect and correct cracking of the upper skin panel at the chem-milled step above the lap joint, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by January 6, 2017.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9301.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9301; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Gaetano Settineri, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *Gaetano.Settineri@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9301; Directorate Identifier 2015–NM–193–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

Fatigue damage can occur locally, in small areas or structural design details, or in widespread areas. Multiple-site damage is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as widespread fatigue damage. It is associated with general degradation of large areas of structure with similar structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the

LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

On May 29, 2008, we issued AD 2008–12–04, Amendment 39–15547 (73 FR 32991, June 11, 2008) (''AD 2008–12–04''), for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. AD 2008–12–04 requires various repetitive inspections to detect cracks along the chem-milled steps of the fuselage skin, and to detect missing or loose fasteners in the area of the preventive modification or repairs, replacement of the time-limited repair with the permanent repair if applicable, and applicable corrective actions, if necessary, which would end certain repetitive inspections. AD 2008–12–04 resulted from a fatigue test that revealed numerous cracks in the upper skin panel at the chem-milled step above the lap joint. We issued AD 2008–12–04 to detect and correct such fatigue-related cracks, which could result in the crack tips continuing to turn and grow to the point where the skin bay flaps open, causing decompression of the airplane.

Actions Since AD 2008–12–04 Was Issued

Since we issued AD 2008–12–04, an evaluation by the DAH indicated that the upper skin panel at the chem-milled step above the lap joint is subject to WFD if the modification was installed after that airplane had accumulated 30,000 total flight cycles. We have determined that it is necessary to reduce the post-modification inspection compliance times, limit installation of the preventive modification to airplanes that have accumulated fewer than 30,000 total flight cycles, and add repetitive inspections for modified airplanes.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015. This service information describes procedures for an external detailed inspection and an external nondestructive inspection (NDI) for cracks in the fuselage skin at chem-milled steps. Corrective actions include a permanent or time-limited repair, a preventive modification, and replacement of loose and missing fasteners. Related investigative actions include internal and external detailed inspections of the repair area. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2008–12–04, this proposed AD would retain all requirements of AD 2008–12–04. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraphs (g), (h), and (i) of this proposed AD. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between this AD and the Service Information.'' This proposed AD would reduce the post-modification compliance times required by AD 2008–12–04, limit installation of the preventive modification to airplanes that have not yet accumulated 30,000 total flight cycles, and add repetitive post-modification inspections and applicable corrective actions.

The phrase ''related investigative actions'' is used in this proposed AD. Related investigative actions are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this proposed AD. Corrective actions are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Difference Between This Proposed AD and the Service Information

Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, specifies to contact the manufacturer for certain instructions, but this proposed AD would require accomplishment of repair methods, modification deviations, and alteration deviations in one of the following ways:

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

Costs of Compliance

We estimate that this proposed AD affects 376 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	Up to 25 work-hours × $85 per hour = $2,125 per inspection cycle.	$0	Up to $2,125 per inspection cycle.	Up to $799,000 per inspection cycle

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Fastener replacement	Up to 1 work-hour × $85 per hour = $85	Minimal	$85

We have received no definitive data that would enable us to provide cost estimates for the related investigative actions, certain repairs, and other applicable actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2008–12–04, Amendment 39–15547 (73 FR 32991, June 11, 2008), and adding the following new AD:

The Boeing Company: Docket No. FAA–2016–9301; Directorate Identifier 2015–NM–193–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by January 6, 2017.

(b) Affected ADs

This AD replaces AD 2008–12–04, Amendment 39–15547 (73 FR 32991, June 11, 2008) (''AD 2008–12–04'').

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) that indicated that the upper skin panel at the chem-milled step above the lap joint is subject to widespread fatigue damage (WFD) if the modification was installed after 30,000 total flight cycles. We are issuing this AD to detect and correct cracking of the upper skin panel at the chem-milled step above the lap joint, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Inspections at Locations Without the Preventive Modification, Time-limited Repair, or Permanent Repair Installed

At locations where a preventive modification, time-limited repair, or permanent repair has not been installed as specified in Boeing Service Bulletin 737–53A1232: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, do an external detailed inspection and an inspection specified in either paragraph (g)(1) or (g)(2) of this AD, for any crack in the fuselage skin at the chem-milled steps at specified locations, in accordance with Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015. Do all applicable related investigative and corrective actions before further flight in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, except as required by paragraph (l)(1) of this AD. Repeat the inspections thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015.

(1) Do an external medium frequency eddy current (MFEC), or magneto optic imager (MOI), or C-Scan inspection.

(2) Do an external ultrasonic phased array (UTPA) inspection.

(h) Repetitive Post-Modification Inspections and Repair at Any Location With the Preventive Modification but No Time-Limited or Permanent Repair

At any location with a preventive modification installed as specified in Boeing Alert Service Bulletin 737–53A1232: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, except as required by paragraph (l)(2) of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Do external detailed and external high frequency and medium frequency eddy current inspections for any crack, in accordance with Part 7 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015. If no crack is found during the inspection, repeat the inspections thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015. If any crack is found during any inspection required by this paragraph, repair before further flight, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, except as required by paragraph (l)(1) of this AD.

(2) Do a detailed inspection for any crack and any loose or missing fasteners, in accordance with Part 7 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015. Repeat the inspections thereafter at applicable time specified in paragraph 1.E, ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015. If a crack is found during the inspection, or any loose or missing fastener is found, before further flight, do all applicable corrective actions, in accordance with Part V of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, except as specified in paragraph (l)(1) of this AD.

(i) Additional Actions for Modified Airplanes

(1) Except for preventive modifications installed on airplanes listed in Appendix A of Boeing Alert Service Bulletin 737–53A1232 at the specified total flight cycles, at any location where a preventive modification as specified in Boeing Alert Service Bulletin 737–53A1232 was installed after the accumulation of 30,000 total flight cycles: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, except as required by paragraph (l)(2) of this AD, do all applicable investigative and corrective actions using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(2) For airplanes which have installed supplemental type certificate (STC) ST01697SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/0812969a86af879b8625766400600105/$FILE/ST01697SE.pdf*) and the preventative modification has been installed after 15,000 total flight cycles: Before the accumulation of 25,000 total flight cycles, do all applicable investigative and corrective actions using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(j) Inspections and Repair at Locations With the Permanent Chem-Milled Step Repair Installed

At any location where a permanent repair has been installed as specified in Boeing Service Bulletin 737–53A1232: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015: Do the inspections specified in paragraph (j)(1) or (j)(2) of this AD, in accordance with Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015. Repeat the inspections thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015. Do all applicable related investigative and corrective actions before further flight in accordance with Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, except as required by paragraph (l)(1) of this AD.

(1) Do an external low frequency eddy current (LFEC) inspection for any crack, and doubler external LFEC and external detailed inspections for any crack and loose or missing fasteners.

(2) Do an external LFEC inspection for any crack, and doubler external LFEC and external detailed inspections for any crack and loose or missing fasteners; and an internal MFEC for any crack.

(k) Inspection and Replacement at Locations With a Chem-Milled Time-Limited Repair Installed

At any location where a chem-milled time-limited repair is installed, do the actions specified in paragraphs (k)(1) and (k)(2) of this AD, at the applicable time specified in 1.E. ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015.

(1) Do internal and external detailed inspections of the time-limited repair for any crack, or loose or missing fasteners, in accordance with Part IV of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015. Repeat the inspections thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015. If any crack is found during the inspection, or if any loose or missing fastener is found, before further flight, do all applicable corrective actions, in accordance with Part IV of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, except as specified in paragraph (l)(1) of this AD.

(2) Replace the time-limited repair with the permanent repair, in accordance with Part IV of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015.

(l) Exceptions to Service Information Specifications

(1) Where Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, specifies to contact Boeing for repair instructions, this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(2) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, specifies a compliance time ''after the date of Revision 2 of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(m) Optional Terminating Action

(1) For airplanes that have accumulated 30,000 total flight cycles or fewer, or for airplanes on which supplemental type certificate (STC) ST0l697SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/0812969a86af879b8625766400600105/$FILE/ST01697SE.pdf*) was installed and have accumulated 15,000 total flight cycles or fewer, accomplishment of the preventive modification specified in Part V of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, terminates the inspections required by paragraph (g) of this AD in the modified areas only.

(2) Installation of a permanent repair as specified in Part III of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, or a time-limited repair as specified in Part IV of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, terminates the inspections required by paragraph (g) of this AD in the repaired areas only.

(n) Installation Limitations of Preventive Modification

As of the effective date of this AD, installation of the preventive modification specified in Boeing Alert Service Bulletin 737–53A1232, is prohibited on the airplanes identified in paragraphs (n)(1) and (n)(2) of this AD.

(1) Airplanes that have accumulated more than 30,000 total flight cycles.

(2) Airplanes which have installed STC ST01697SE and that have accumulated more than 15,000 total flight cycles.

(o) Credit for Previous Actions

This paragraph provides credit for the corresponding actions specified in paragraphs (g), (h), (i), (j), (k), and (m) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraph (o)(1), (o)(2), or (o)(3) of this AD.

(1) Boeing Special Attention Service Bulletin 737–53A1232, dated April 2, 2007, which was incorporated by reference in AD 2008–12–04.

(2) Boeing Special Attention Service Bulletin 737–53A1232, Revision 1, dated May 18, 2012, which is not incorporated by reference in this AD.

(3) Boeing Special Attention Service Bulletin 737–53A1232, Revision 2, dated July 26, 2013, which is not incorporated by reference in this AD.

(p) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet

the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for repairs or preventive modifications for AD 2008–12–04 are approved as AMOCs for the installation of the repair or preventive modification specified in this AD, provided all post-repair or post-modification inspections are done at the applicable times specified in the AMOC, or in tables 1a, 1b, 2, and 3 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1232, Revision 3, dated July 27, 2015, whichever occurs first.

(q) Related Information

(1) For more information about this AD, contact Gaetano Settineri, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *Gaetano.Settineri@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 25, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–26164 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–8164; Airspace Docket No. 15–ANM–25]

Proposed Establishment of Class E Airspace, Manti, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Manti-Ephraim Airport, Manti, UT, to accommodate new Instrument Flight Rules (IFR) operations for standard instrument approach and departure procedures. The establishment of Class E airspace is necessary to support the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before January 6, 2017.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2016–8164; Airspace Docket No. 15–ANM–25, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace at Manti-Ephraim Airport, Manti, UT.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2016–8164/Airspace Docket No. 15–ANM–25.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace

Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Manti-Ephraim Airport, Manti, UT. Class E airspace would be established within a 4-mile radius of the Manti-Ephraim Airport, with segments extending from the 4-mile radius to 11 miles southwest of the airport, and 7.2 miles northeast of the airport. This airspace is necessary to support the development of IFR operations in standard instrument approach and departure procedures at the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth:

* * * * *

ANM UT E5 Manti, UT [New]

Manti-Ephraim Airport, Utah
(Lat. 39°19′53″ N., long. 111°36′45″ W.)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of Manti-Ephraim Airport, and that airspace 2 miles either side of the airport 225° bearing extending from the 4-mile radius to 11 miles southwest of the airport, and 1.8 miles east of the line beginning at lat. 39°17′50″ N., long. 111°39′27″ W., to lat. 39°14′35″ N., long. 111°41′06″ W., and that airspace beginning at the point where the 065° bearing from the airport intersects the 4-mile radius to lat. 39°26′34″ N., long. 111°31′41″ W., to lat. 39°26′54″ N., long. 111°36′20″ W., to the point where the 001° bearing from the airport intersects the 4-mile radius, thence clockwise along the 4-mile radius to the point of beginning.

Issued in Seattle, Washington, on November 8, 2016.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–27858 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9266; Airspace Docket No. 16–ASO–5]

Proposed Establishment of Class E Airspace; Kill Devil Hills, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Kill Devil Hills, NC, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) serving First Flight Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the heliport.

DATES: Comments must be received on or before January 6, 2017.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg Ground Floor, Rm W12–140, Washington, DC 20590; Telephone: 1–800–647–5527, or 202–647–9826.You must identify the Docket No. FAA–2016–9266; Airspace Docket No. 16–ASO–5, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace at First Flight Airport, Kill Devil Hills, NC.

Comments Invited

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

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2016–9266; Airspace Docket No. 16–ASO–5.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Kill Devil Hills, NC, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for First Flight Airport. Controlled airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the airport would be established for IFR operations.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

Paragraph 6005. Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Kill Devil Hills, NC [New]

First Flight Airport, NC

(Lat. 36°1′3″ N., long. 75°40′18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of First Flight Airport.

Issued in College Park, Georgia, on November 7, 2016.

Ryan W. Almasy,

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

[FR Doc. 2016–27859 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 24

[Docket No. TTB–2016–0010; Notice No. 164]

RIN 1513–AB61

Wine Treating Materials and Related Regulations

AGENCY: Alcohol and Tobacco Tax and Trade Bureau.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is proposing to amend its regulations pertaining to the production of wine and in particular in regard to the permissible treatments that may be applied to wine and to juice from which wine is made. These proposed amendments are in response to requests from wine industry members to authorize certain wine treating materials and processes not currently authorized by TTB regulations. TTB invites comments on the proposed regulatory changes described in this document, as well as on other wine treatment issues for which regulatory amendments are not proposed in this document.

DATES: Comments must be received by January 23, 2017.

ADDRESSES: Please send your comments on this document to one of the following addresses:

- *https://www.regulations.gov* (via the online comment form for this document as posted within Docket No. TTB–2016–0010 at *Regulations.gov*, the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

See the Public Participation section of this document for specific instructions and requirements for submitting comments, and for information on how to request a public hearing or view or obtain copies of the petition and supporting materials.

FOR FURTHER INFORMATION CONTACT: Kara Fontaine, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 103.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Chapter 51 of the Internal Revenue Code of 1986, as amended (IRC), 26 U.S.C. chapter 51, contains provisions concerning the taxation and production of distilled spirits, wines, and beer. The Alcohol and Tobacco Tax and Trade Bureau (TTB) has been delegated authority to promulgate regulations pertaining to wine under Chapter 51 of the IRC. The statutory provisions of the IRC related to the distilled spirits and wine regulations that TTB promulgates include, but are not limited to, the following:

- Section 5002(a)(4) of the IRC (26 U.S.C. 5002(a)(4)), which defines the term ''distiller,'' in pertinent part, as including any person who ''(A) produces distilled spirits from any source or substance'' or ''(C) by any process separates alcoholic spirits from any fermented substance * * *.''
- Section 5171(a) of the IRC (26 U.S.C. 5171(a)), which requires that operations ''as a distiller'' only be conducted on the bonded premises of a distilled spirits plant by a person who is qualified under subchapter B of chapter 51 of the IRC.
- Section 5373 of the IRC (26 U.S.C. 5373), which authorizes the promulgation of regulations regarding the type of wine spirits that may be used in wine production.
- Section 5381 of the IRC (26 U.S.C. 5381), which provides that natural wine is the product of the juice or must of sound, ripe grapes or other sound, ripe fruit, made with such cellar treatment as may be authorized under section 5382.
- Section 5382(a) of the IRC (26 U.S.C. 5382(a)), which provides that proper cellar treatment of natural wine constitutes those practices and procedures in the United States, of using various methods and materials to correct or stabilize the wine, or the fruit juice from which it is made, so as to produce a finished product acceptable in good commercial practice as prescribed by regulation. Section 5382(c) also authorizes the promulgation of regulations setting forth limitations on the preparation and use of methods and materials for clarifying, stabilizing, preserving, fermenting, and correcting wine and juice.
- Section 5387(a) of the IRC (26 U.S.C. 5387(a)), which authorizes the production of agricultural wine, classed as ''standard agricultural wine,'' from agricultural products other than the juice of fruit. Such agricultural wine must be made in accordance with good commercial practice as prescribed by regulation and may be cellar treated in accordance with sections 5382(a) and (c) of the IRC. Also, section 5387(b) prohibits the addition of wine spirits, coloring material or herbs, or other flavoring material (except hops in the case of honey wine) to agricultural wine, as well as the blending together of wines from different agricultural commodities.

The regulations promulgated under the IRC regarding the production of wine are set forth in part 24 of title 27 of the Code of Federal Regulations (27 CFR part 24) and include, but are not limited to, the following provisions:

- 27 CFR 24.10, which contains the definitions of certain terms used in 27 CFR part 24.
- 27 CFR 24.225, which sets forth rules under which proprietors of a bonded wine premises may withdraw and receive spirits without payment of tax from the bonded premises of a distilled spirits plant and add the spirits to natural wine on bonded wine premises.
- 27 CFR 24.246, which includes a table that lists the materials authorized for the treatment of wine and juice.
- 27 CFR 24.247, which includes a table that lists materials authorized for the treatment of distilling material.
- 27 CFR 24.248, which includes a table that lists processes authorized for the treatment of wine, juice, and distilling materials.

TTB administers chapter 51 of the IRC and its implementing regulations pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01 dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws.

In addition, TTB consults with the U.S. Food and Drug Administration (FDA) on whether alcohol beverages are adulterated under the Federal Food, Drug, and Cosmetic Act (FD&C Act), including whether a substance added to an alcohol beverage is an unapproved food additive. Alcohol beverages are

considered ''food'' under the FD&C Act. A substance added to food is a food additive unless it is otherwise excluded from the definition of a food additive under the FD&C Act. For example, the use of a substance in food that is generally recognized as safe by qualified experts (GRAS) is excluded from the definition of a food additive under the FD&C Act. The use of a food additive in food must be authorized by FDA either through a food additive regulation or an effective food contact notification (FCN). FDA has listed certain GRAS uses in its regulations. In addition, FDA has a voluntary notification procedure by which any person may notify FDA of a conclusion that a use of a substance is GRAS. FDA evaluates whether the notice provides a sufficient basis for a GRAS conclusion (which results in a ''no questions'' response) or whether FDA believes there is an insufficient basis for a GRAS conclusion (which results in an ''insufficient basis'' response). For the purpose of this rulemaking, we use the term ''consistent with the food additive requirements under the FD&C Act'' to refer to: (1) Authorized food additive uses; (2) uses that are GRAS under FDA's regulations, that are the subject of a ''no questions'' letter from FDA in response to a GRAS notice, or that are subject to an opinion letter from FDA stating that the use is GRAS or otherwise permissible; or (3) uses that are otherwise excluded from regulation as a food additive.

Based on TTB's experience in administering the statutory and regulatory provisions mentioned above, TTB is proposing in this document a number of amendments to the TTB regulations and inviting comments from the public on these proposed regulatory changes. In addition, TTB is outlining in this document a number of other issues that are not the subject of proposed regulatory changes. TTB invites comments from the public on those issues to assist TTB in determining whether any of those issues warrant specific regulatory changes.

Terms Used in This Document

TTB is providing the following definitions to assist in the comprehension of this final rule. The definitions of agricultural wine, amelioration, brix, natural wine, standard wine, and wine spirits come from § 24.10, the definition of essences is derived from 27 CFR 24.85, and the definition of special natural wine is derived from 27 CFR 24.10 and 24.195. The definitions of ''natural wine'' and ''standard wine'' are consistent with statutory provisions at sections 5381 and 5392, respectively. The definitions of ''agricultural wine,'' ''amelioration,'' and ''special natural wine'' reflect language used in statutory provisions at sections 5387, 5383, and 5386, respectively. The definition of ''brix'' is derived, in part, from statutory provisions at sections 5382 and 5393. Definitions of industry member and yeast nutrients also are provided, although these terms are not specifically defined in statutory provisions or elsewhere in the regulations.

- *Agricultural wine:* Wine made from suitable agricultural products other than the juice of grapes, berries, or other fruits.
- *Amelioration:* The addition to juice or natural wine before, during, or after fermentation, of either water or pure dry sugar, or a combination of water and sugar to adjust the acid level.
- *Brix:* The quantity of dissolved solids expressed as grams of sucrose in 100 grams of solution at 68 degrees F (20 degrees C.) (Percent by weight of sugar). (The definition of ''Brix'' in § 24.10 incorrectly refers to 60 degrees F rather than 68, which is the equivalent of 20 degrees C; TTB is proposing to correct this typographical error in this document.)
- *Essences:* Preparations of natural constituents extracted from fruit, herbs, berries, etc.
- *Industry member:* For the purposes of this document, a proprietor of a bonded wine premises.
- *Natural wine:* The product of the juice or must of sound, ripe grapes or other sound, ripe fruit (including berries) made with any cellar treatment authorized by 27 CFR part 24, subparts F and L, and containing not more than 21 percent by weight (21 degrees Brix dealcoholized wine) of total solids.
- *Special natural wine:* A product produced from a base of natural wine (including heavy bodied blending wine) to which natural flavorings are added, and made pursuant to an approved formula in accordance with 27 CFR part 24, subpart H. In subpart H, § 24.195 additionally explains that, among other things, natural flavorings are added in quantities or proportions such that the resulting product derives character and flavor distinctive from the base wine and distinguishable from other natural wine.
- *Standard wine:* Natural wine, specially sweetened natural wine, special natural wine, and standard agricultural wine, produced in accordance with 27 CFR part 24, subparts F, H, and I.
- *Wine spirits:* Brandy or wine spirits authorized under 26 U.S.C. 5373 for use in wine production.
- *Yeast nutrients:* For the purposes of this document, vitamins and minerals that aid in the fermentation of juice to wine by acting as food for yeast.

TTB Administrative Approvals of Wine and Juice Treatments

Industry members who wish to experiment with, or commercially use, a treating material or process not specifically authorized in 27 CFR part 24 must file an application with TTB requesting authorization to use the new material or process. TTB may approve such requests as experiments under 27 CFR 24.249 or allow for the continual use of the new material or process under 27 CFR 24.250.

Standards regarding approval of the experimental use of a new treating material or process are set forth in § 24.249. The provisions covering applications for commercial use of a new material or process are contained in § 24.250. Consistent with §§ 24.246 and 24.248, TTB may approve the use of wine treating materials and processes that are determined to be acceptable in good commercial practice. In general, good commercial practice includes addressing the reasonable technological or practical need to enhance the keeping, stability, or other qualities of the wine, and achieving the winemaker's desired effect without creating an erroneous impression about the character and composition of the wine.

If TTB believes that it would be appropriate to approve the request, whether as an experiment under § 24.249 or for continued commercial use under § 24.250, it will send a letter to the industry member authorizing use of the material or process and setting forth the conditions for that use. Also, when TTB approves the continued commercial use of a wine treatment material or process under § 24.250, it will provide public notice of such approval on its Web site at *https://www.ttb.gov/wine/wine_treating_materials.shtml.* The listing of administrative approvals on the TTB Web site affords all industry members the opportunity to use an administratively approved wine treating material or process pending future rulemaking.

TTB conducts rulemaking to consider adding to or amending the materials and processes authorized in the regulations for treating wine, juice, and distilling material listed in §§ 24.246 through 24.248 for several reasons. First, when TTB administratively approves wine treatments for continued commercial use under § 24.250, TTB makes an initial determination that such material

or process is consistent with ''good commercial practice.'' Administrative approval provides a more expeditious process than rulemaking for industry members to obtain approval to use new materials and processes. On the other hand, the rulemaking process allows industry members and the public an opportunity to comment on, and specifically to confirm or refute, TTB's initial determination that the use of a material or process is consistent with good commercial practice. TTB believes that input from industry members, the users and potential users of these treatments commercially, should be obtained before making a final determination concerning the acceptability of the treatment in good commercial practice.

Similarly, TTB might not approve a request for administrative approval of a wine treatment because the Bureau is reluctant to approve the use of that particular wine treatment without input from industry members and the public concerning the treatment's acceptability in good commercial practice. After obtaining information and comments through rulemaking, TTB may determine that the wine treatment is consistent with good commercial practice and approve the use of such treatment. As discussed below, through this document, TTB is seeking comments on the approval of the use of several proposed treatments that have not been administratively approved by the Bureau.

In addition, administrative approval of a wine treatment under § 24.250 does not guarantee acceptance in foreign markets of any wine so treated, and conducting rulemaking and adding wine treating materials and processes to §§ 24.246 through 24.248 results in acceptance of the treated wines in certain foreign jurisdictions. For example, under Article 4.2 of the 2006 Agreement between the United States of America and the European Community on Trade in Wine (Wine Agreement), the United States and the European Union agreed not to restrict ''on the basis of either wine-making practices or product specifications, the importation, marketing or sale of wine originating in the territory of the other Party that is produced using wine-making practices that are authorized under laws, regulations and requirements of the other Party listed in Annex I and published or communicated to it by that other Party.'' Article 5.1 of the Wine Agreement also contains provisions to authorize new or modified wine-making practices if a party to the Wine Agreement provides public notice and specific notice to the other Party, and provides a reasonable opportunity for comment and to have those comments considered. For new wine treatments administratively approved in the United States, TTB provides such public notice and opportunity to comment through the regulatory rulemaking process.

TTB's most recent amendment of §§ 24.246 through 24.248 to reflect treating material and process approvals was published as Treasury Decision (T.D.) TTB–61 in the **Federal Register** (72 FR 51707) on September 11, 2007. Since that time, TTB has received and approved a number of applications for experimental or commercial uses. These include the 15 wine and juice treating materials and the combined use of two existing wine treatment processes, discussed below, on which TTB believes it has accumulated enough analytical data or other information to propose adding them to the list of approved materials and processes in the TTB regulations at §§ 24.246 and 24.248.

TTB is soliciting comments from all interested persons on TTB's position that, based on the information set forth below, the use of each of these materials or processes is consistent with good commercial practice.

Yeast Nutrients

Seven of the administrative approvals mentioned above authorize the use of additional yeast nutrients in the treatment of wine. TTB and its predecessor agencies have recognized the need to supply yeast with appropriate nutrients to facilitate healthy fermentation and to prevent ''stuck fermentation'' (fermentation that has halted before completion due to, among other things, high sugar levels or nutrient deficiencies). The following yeast nutrients are currently listed in § 24.246 as authorized wine and juice treating materials:

- Ammonium phosphate;
- Calcium pantothenate (for apple wine);
- Soy flour (defatted);
- Thiamine hydrochloride;
- Yeast, autolyzed; and
- Yeast, cell wall/membrane of autolyzed yeast.

In 2007, TTB received a petition from Gusmer Enterprises Inc. (Gusmer) to amend § 24.246 to allow the use of 19 vitamins and minerals as yeast nutrients in the production of wine. Gusmer provided the names, descriptions, functional roles for yeast metabolism, conditions of use, and suggested maximum amounts for the proposed vitamins and minerals. The petitioner also provided documentation on the regulatory status of the uses of 15 of the 19 proposed vitamins and minerals. Four materials identified by the petitioner, selenium, boron, molybdenum, and chromium, are not included in this proposal because no information was provided to demonstrate that their uses would be consistent with the food additive requirements under the FD&C Act.

Of the remaining 15 vitamins and minerals proposed as yeast nutrients for the production of wine by the petitioner, seven have been administratively approved by TTB for continued commercial use as yeast nutrients under § 24.250 in response to industry member requests which were received by TTB subsequent to TTB's receipt of the Gusmer petition. TTB is proposing, in this document, to amend the regulations to add six of these vitamins and minerals to the list of approved treating materials and expand the approved use of a seventh that already appears on the list. Specifically, TTB is proposing to add biotin, folic acid, inositol, magnesium sulfate, niacin, and pyridoxine hydrochloride to the list of authorized wine and juice treating materials in § 24.246, and to expand the current permitted use of calcium pantothenate in that section, as described later in this document.

For each of these seven yeast nutrients TTB is proposing to limit the amount of usage to the amounts provided in the Gusmer petition. While many of these yeast nutrients are vitamins that are authorized for use in food, in the recent past FDA has advised TTB that the fortification of ''alcoholic beverages'' with nutrients is not consistent with FDA's fortification policy in 21 CFR 104.20 or the Dietary Guidelines for Americans. In addition, FDA has informed TTB that FDA regulations for certain vitamins (*e.g.,* folic acid and inositol) would not authorize their use in alcohol beverages as nutrients. Nonetheless, FDA has stated to TTB that these vitamins could be used for the purpose of providing nutrients to the yeast, and not to fortify the wine, where the levels of the vitamin remaining in the wine would be of a de minimis level. For these reasons, TTB believes it is important to place limitations on the use of these substances that permit their use as nutrients for yeast growth but not as food additives for human consumption.

For reasons discussed below in the section titled ''Other Issues for Public Comment and Possible Regulatory Action,'' TTB is not proposing in this document to add the eight vitamins and minerals that TTB has not approved administratively under § 24.250 to the list of authorized wine and juice treating

materials in § 24.246. However, TTB is seeking comments on whether these eight additional vitamins and minerals should be approved as authorized wine treating materials.

Proposed Regulatory Amendments

Wine Treating Materials

General Comment on Yeast Nutrients

The six new yeast nutrients that TTB is proposing for the first time, based on the Gusmer petition described above, and the six yeast nutrients already authorized for use by regulation, as listed in § 24.246 (including calcium pantothenate), have been grouped together in the proposed § 24.246 table below under the heading ''Yeast nutrients.'' This format is similar to the one that currently exists for ''Enzymatic activity.'' TTB is also broadening the use of those yeast nutrients that are currently listed in § 24.246 to allow for their use in all juice and wine.

Blends and Other Combinations of Approved Treating Materials

TTB notes that, while the table in § 24.246 includes some references to approved materials used in combination (see, for example, the entry for potassium carbonate), there is no general statement to the effect that one or more approved materials may be used as a blend or otherwise in combination with another. TTB believes that such combined uses should be permitted, provided that the use of each material conforms to the conditions specified for that material (that is, the reason or purpose for its use and the references and limitations that apply to its use). TTB is proposing, in this document, to amend § 24.246 accordingly. This revision appears in proposed § 24.246(b), with the current § 24.246(b) moved to the proposed § 24.246(c).

Specific Wine Treating Materials

Acacia (gum arabic): TTB is proposing to authorize a maximum use rate of 8 pounds of acacia per 1,000 gallons (1.92 grams per Liter (g/L)) of wine in the list of authorized wine and juice treating materials in § 24.246. Acacia is currently listed in § 24.246 as an authorized treating material to clarify and stabilize wine, subject to a limitation that its use shall not exceed 2 pounds per 1,000 gallons (0.24 g/L) of wine. TTB has administratively approved several requests from industry members to use acacia to treat wine at levels exceeding the current maximum. The current limitation in § 24.246 was based on earlier evaluations of treated wine and was adopted through a public rulemaking procedure on September 24, 1984 (T.D. ATF–182, 49 FR 37522). Acacia also has a long record of use at the level prescribed in the regulation.

While the increased amounts specified in those requests ranged as high as 25 pounds of acacia per 1,000 gallons of wine, 16 pounds per 1,000 gallons was the highest level that TTB approved. In those reviews and approvals, TTB referenced FDA's regulation (21 CFR 184.1330) for the use of acacia at a rate greater than the amount listed in § 24.246, and TTB reviewed and considered relevant submitted data required under § 24.250(b). TTB notes that some of the requests to use higher amounts of acacia also requested approval for an additional purpose, that is, to improve ''mouthfeel''; however, TTB's authority under 26 U.S.C. 5382 to authorize wine treating materials only extends to correcting or stabilizing the wine or the fruit juice from which it is made. As reflected in its implementing regulations in § 24.246, TTB policy is to allow for wine treating materials that filter, clarify, or purify wine or juice as materials that correct or stabilize wine. Accordingly, TTB did not approve the use of acacia for the purpose of improving the ''mouthfeel'' of wine.

TTB's administrative approvals authorized the use of acacia in the treatment of wine at a level of 16 pounds per 1,000 gallons of wine, which is equivalent to a maximum usage level of 2 percent. Subsequent to those administrative approvals, TTB learned that although the FDA regulation cited for acacia gum in § 24.246 (§ 184.1330) is the correct citation, the beverage category listed in the table of FDA's regulation does not cover TTB's intended use in wine. This is because the FDA regulation further cites the food category definition in 21 CFR 170.3(n)(3), which does not cover use in wine. Accordingly, the correct category from the table in § 184.1330 is ''all other food categories.'' This category has a limit of one percent acacia gum (rather than 2 percent); the functional effects for this category match TTB's uses as clarifying and stabilizing wine. TTB is correcting this mistake in this rulemaking by proposing to increase the maximum use rate of acacia gum in wine to 8 pounds per 1,000 gallons of wine. TTB's earlier administrative approvals authorizing the use of acacia at levels greater than 8 pounds per 1,000 gallons of wine are revoked.

Bakers yeast mannoprotein: TTB is proposing to add bakers yeast mannoprotein, at a use rate of 50–400 milligram per liter (mg/L) of wine, to the list of approved wine and juice treating materials contained in § 24.246.

TTB administratively approved the use of bakers yeast mannoprotein to stabilize wine from the precipitation of potassium bitartrate crystals, in response to a number of requests from industry members. In response to GRAS Notice No. GRN 000284, the FDA stated that it had no questions regarding the notifier's conclusion that bakers yeast mannoprotein is GRAS for use as a stabilizing agent in wines at levels ranging from 50–400 milligrams per liter (mg/L), to prevent tartaric acid precipitation. In its administrative approval, TTB restricted the use of bakers yeast mannoprotein to 50–400 mg/L.

Beta-glucanase having an enzyme activity derived from Trichoderma harzianum: TTB is proposing to add beta-glucanase, at a use rate of 30 parts per million (ppm) of wine, to the list of approved wine and juice treating materials contained in § 24.246. TTB administratively approved the use of beta-glucanase having an enzyme activity derived from *Trichoderma harzianum.* Several industry members requested approval to treat wine with an enzymatic blend consisting of pectinase and beta-glucanase having an enzyme activity derived from *Trichoderma harzianum.* Pectinase is an approved wine treating material listed with carbohydrase in § 24.246. While beta-glucanase is also approved as a wine treating material listed with cellulose in § 24.246, that approval is limited to beta-glucanase having an enzyme activity derived from *Trichoderma longibrachiatum.* In response to GRAS Notice No. GRN 000149, FDA stated that it had no questions concerning the notifier's conclusion that the beta-glucanase enzyme preparation derived from *Trichoderma harzianum* is GRAS at the minimum levels necessary to achieve the desired effect, typically ranging from 1 to 3 grams per hectoliter of wine (10–30 ppm). In its administrative approval posted on *https://www.ttb.gov/wine/wine_treating_materials.shtml* in 2010, TTB inadvertently stated that the amount of beta-glucanase derived from *Trichoderma harzianum* used must not exceed 300 ppm. TTB is correcting this mistake in this rulemaking by aligning the proposed use rate with the rate stated in GRAS Notice No. GRN 000149. Accordingly, TTB is proposing to amend the table in § 24.246 by adding to the entry on ''Enzymatic activity: Cellulase (beta-glucanase)'' a second source, *Trichoderma harzianum,* stating that its use must not exceed 30 ppm, and by referencing GRAS Notice No.

GRN 000149. TTB is soliciting comments on this proposed addition, the limitation of 30 ppm, and also on whether beta-glucanase enzymatic activity derived from *Trichoderma longibrachiatum* is still relevant for wine treatments.

Biotin: TTB is proposing the addition of biotin to the list of authorized wine and juice treating materials in § 24.246 as a yeast nutrient at a use rate not to exceed 25 parts per billion (ppb). TTB administratively approved an industry member's request to use biotin as a yeast nutrient in the production of wine. FDA has stated to TTB in an informal opinion that biotin can be used for the purpose of providing nutrients to yeast, and not to fortify the wine, where the levels of biotin remaining in the wine would be of a de minimis level. The Gusmer petition proposed a maximum use rate for biotin of 25 ppb.

Calcium pantothenate (vitamin B5): TTB is proposing to amend § 24.246 to expand the current authorized use of calcium pantothenate from use as a yeast nutrient in just apple wine to use as a yeast nutrient in all wine. TTB administratively approved an industry member's request to use calcium pantothenate as a yeast nutrient in the production of wine. FDA has stated to TTB in an informal opinion that calcium pantothenate can be used for the purpose of providing nutrients to yeast, and not to fortify the wine, where the levels of calcium pantothenate remaining in the wine would be of a de minimis level. TTB's administrative approval restricted its use to that which is consistent with good commercial practice. TTB is proposing to apply the same use limit as is provided for the use of calcium pantothenate in apple wine, that is, a use rate of 0.1 pound of calcium pantothenate per 25,000 gallons (1.5 ppm), and to allow for the use of calcium pantothenate for all juice and wine by removing the current apple wine limitation specified in § 24.246.

Chitosan: TTB is proposing to add chitosan from *Aspergillus niger,* at a use rate not to exceed 10 grams per 100 liters of wine, to the list of approved wine and juice treating materials contained in § 24.246. TTB administratively approved several industry member requests to use chitosan from *Aspergillus niger* to remove spoilage organisms, such as Brettanomyces, from wine. In its response to GRAS Notice No. GRN 000397, FDA stated that it had no questions regarding the notifier's conclusion that chitosan from *Aspergillus niger* is GRAS for use as a secondary direct food ingredient in alcoholic beverage production at levels between 10 and 500 grams per hectoliter (100 liters). In its administrative approvals, TTB restricted the use of chitosan from *Aspergillus niger* to an amount not to exceed 10 grams per 100 liters of wine.

Folic acid: TTB is proposing to add folic acid to the list of authorized wine and juice treating materials in § 24.246 for use as a yeast nutrient at a use rate not to exceed 100 ppb. TTB administratively approved an industry member's request to use folic acid as a yeast nutrient in the production of wine. FDA has stated to TTB in an informal opinion, that folic acid can be used for the purpose of providing nutrients to the yeast, and not to fortify the wine, where the levels of folic acid remaining in the wine would be of a de minimis level. In TTB's administrative approval, TTB limited the use of folic acid to that which is consistent with good commercial practice and did not provide a specific use limit. The Gusmer petition proposed a maximum use rate of 100 ppb for folic acid when used as a yeast nutrient in the production of wine. Such a use rate will ensure that any folic acid remaining in the wine would be of a de minimis level.

Inositol (myo-inositol): TTB is proposing to add inositol to the list of authorized wine and juice treating materials in § 24.246 to be used as a yeast nutrient at a use rate not to exceed 2 ppm. TTB administratively approved an industry member's request to use inositol as a yeast nutrient in the production of wine. FDA has stated to TTB in an informal opinion that inositol could be used for the purpose of providing nutrients to the yeast, and not to fortify the wine, where the levels of inositol remaining in the wine would be of a de minimis level. In TTB's administrative approval, TTB restricted the use of inositol to that which is consistent with good commercial practice and did not provide a specific use limit. The Gusmer petition proposed a maximum use rate of 2 ppm for inositol when used as a yeast nutrient in the production of wine. The maximum use rate of 2 ppm will ensure that any inositol remaining in the wine would be of a de minimis level.

L(+) tartaric acid: TTB administratively approved several industry member requests to use L(+) tartaric acid, prepared using an enzyme from immobilized *Rhodococcus ruber* cells, to correct natural acid deficiencies and to reduce pH when ameliorating material is used in the production of grape wine. Tartaric acid is currently listed in § 24.246 as a material authorized for the treatment of wine and juice for these same purposes; however, the current reference in § 24.246 is to the FDA regulation at 21 CFR 184.1099, which specifies that tartaric acid with the L configuration is obtained as a byproduct of wine manufacturing.

In response to GRAS Notice No. GRN 000187 for L(+) tartaric acid (alternative method) prepared using an enzyme from immobilized *Rhodococcus ruber* cells, FDA stated that it had no questions regarding the notifiers' conclusion that the substance is GRAS for use as an alternative source of L(+) tartaric acid in food at levels not to exceed current good manufacturing practices for use as a firming agent, a flavor enhancer, a flavoring agent, a humectant, and a pH control agent, as described in 21 CFR 184.1099. The FDA also noted that the material is chemically identical to the tartaric acid affirmed as GRAS in 21 CFR 184.1099.

Based on the FDA response to the GRAS notice and TTB's analysis of wine treated with L(+) tartaric acid, TTB is proposing to amend the entry for ''tartaric acid'' in the table at the end of § 24.246 to indicate that ''tartaric acid'' may be manufactured by either the method specified in 21 CFR 184.1099 or the method specified in GRAS Notice No. GRN 000187, and to add the citation to the FDA GRAS notice in the ''Specific limitation'' column.

Magnesium sulfate: TTB is proposing to add magnesium sulfate to the list of authorized wine and juice treating materials in § 24.246 to be used as a yeast nutrient at a use rate not to exceed 15 ppm. TTB administratively approved an industry member's request to use magnesium sulfate as a yeast nutrient in the production of wine. FDA has stated to TTB in an informal opinion that magnesium sulfate can be used for the purpose of providing nutrients to yeast, and not to fortify the wine, where the levels of magnesium sulfate remaining in the wine would be of a de minimis level. In TTB's administrative approval, TTB restricted the use of magnesium sulfate as a yeast nutrient to that which is consistent with good commercial practice and did not provide a specific use limit. The Gusmer petition proposed a maximum use rate of 15 ppm for magnesium sulfate when used as a yeast nutrient in the production of wine.

Niacin (vitamin B3): TTB is proposing to add niacin to the list of authorized wine and juice treating materials in § 24.246 to be used as a yeast nutrient at a use rate not to exceed 1 ppm. TTB administratively approved an industry member's request to use niacin as a yeast nutrient in the production of wine. FDA has stated to TTB in an informal opinion that niacin can be used for the purpose of providing nutrients to yeast,

and not to fortify the wine, where the levels of niacin remaining in the wine would be of a de minimis level. In TTB's administrative approval, TTB restricted the use of niacin as a yeast nutrient to that which is consistent with good commercial practice and did not provide a specific use limit. The Gusmer petition proposed a maximum use rate of 1 ppm for niacin when used as a yeast nutrient in the production of wine.

Polyvinyl-pyrrolidone (PVP)/ polyvinylimadazole (PVI) polymer: In 2005, TTB began administratively approving industry member requests to use a polyvinyl-pyrrolidone (PVP) and polyvinylimadazole (PVI) copolymer (PVP/PVI) as a wine treating material to be used for clarifying and stabilizing alcohol beverages. PVP had once been listed as an authorized wine treating material in ATF regulations at 27 CFR 240.1051, Materials Authorized for Treatment of Wine. Specifically, it was authorized as a clarifying agent for wine. After a 1990 recodification of 27 CFR part 240, ATF rescinded its approval of PVP as a wine treating material because it was no longer in use by wine producers. See T.D. ATF–299 (55 FR 24974). However, in the past several years TTB has received a number of requests to use the PVP/PVI copolymer as an authorized wine treating material. The PVP/PVI copolymer binds heavy metal ions and sulfides present in juice and wine, after which the bound materials and the PVI/ PVP can be removed from the liquid during filtration.

On July 5, 2003, FDA allowed BASF Corporation's Food Contact Substance (FCS) Notification for their PVP/PVI copolymer to become effective (FCN No. 320). Under section 409(h)(2)(C) of the FD&C Act (21 U.S.C. 348 (h)(2)(C)) a food contact notification (FCN) is only effective for the manufacturer or supplier identified in the notification. Persons who market a FCS based on an effective notification must be able to demonstrate that the notification is effective for their food contact substance. All persons who purchase a food contact substance manufactured or supplied by a manufacturer or supplier identified in an effective notification may rely on that notification to legally market or use the food contact substance for the use that is the subject of the notification, consistent with any limitations in that notification. According to FDA FCN No. 320, the blend ''is intended to be added directly to alcoholic beverages during the maturation process . . . is to be completely removed by filtration . . . and is limited to single use applications.'' The amount must not exceed 80 grams per 100 liters of wine.

Based on FDA FCN No. 320, TTB's experience with the use of sulfide and metal reducing matrix sheets (which contain PVI and are approved wine treating processes listed in § 24.248), and TTB's analysis of wine treated with the PVP/PVI copolymer, TTB is proposing to amend the table at the end of § 24.246 by adding the PVP/PVI copolymer as described by FDA FCN No. 320 for use at a level not to exceed 80 grams per 100 liters of wine to remove heavy metal ions and sulfides from wine.

Potato protein isolates: TTB is proposing to add potato protein isolates, at a use rate of 500 ppm or 50 grams per 100 liters (50 g/hL) of wine, as a fining agent, to the list of approved wine and juice treating materials contained in § 24.246. TTB administratively approved an industry member's request to use potato protein isolates as a fining agent for wine. In response to GRAS Notice No. GRN 000447, FDA stated that it had no questions regarding the notifier's conclusion that potato protein isolates are GRAS for various technical effects in a variety of foods that include alcoholic beverages at levels ranging from 0.01 to 15 percent. In its administrative approval, TTB restricted the use of potato protein isolates to an amount not to exceed 500 ppm or 50 g/ hL of wine for the purpose of fining wine. The proposed limitation is consistent with that of other countries.

Pyridoxine hydrochloride (vitamin B6): TTB is proposing to add pyridoxine hydrochloride to the list of authorized wine and juice treating materials in § 24.246 to be used as a yeast nutrient at a use rate not to exceed 150 ppb. TTB administratively approved an industry member's request to use pyridoxine hydrochloride as a yeast nutrient in the production of wine. FDA has stated to TTB in an informal opinion that pyridoxine hydrochloride can be used for the purpose of providing nutrients to yeast, and not to fortify the wine, where the levels of pyridoxine hydrochloride remaining in the wine would be of a de minimis level. In its administrative approval, TTB restricted the use of pyridoxine hydrochloride as a yeast nutrient to that which is consistent with good commercial practice and did not provide a specific use limit. The Gusmer petition proposed a maximum use rate of 150 ppb for pyridoxine hydrochloride when used as a yeast nutrient in the production of wine.

Sodium carboxymethyl cellulose: TTB is proposing to add sodium carboxymethyl cellulose to the list of authorized wine and juice treating materials in § 24.246, to be used to stabilize wine from tartrate precipitation at a level not to exceed 0.8 percent of the wine. TTB administratively approved several industry member requests to use sodium carboxymethyl cellulose to stabilize wine by preventing tartrate precipitation. FDA regulations at 21 CFR 182.1745 state that sodium carboxymethyl cellulose is GRAS when used in accordance with good manufacturing practice. In TTB's administrative approval, TTB restricted the use of sodium carboxymethyl cellulose to stabilize wine by preventing tartrate precipitation to an amount not to exceed 0.8 percent of the wine.

Processes for the Treatment of Wine, Juice, and Distilling Material

TTB is proposing to amend the regulations in § 24.248, which set forth certain processes that TTB has approved as being consistent with good commercial practice for use by proprietors in the production, cellar treatment, or finishing of wine, juice, and distilling materials, within the limitations of that section. Please note that industry members are responsible for ensuring that any component used in an approved process, including materials in contact with wine or juice, is used in a way that is consistent with any applicable FDA regulations, including FDA food contact regulations.

Cross Flow Filtration

TTB is proposing to expand the authorized uses of nanofiltration and ultrafiltration in § 24.248 to include dealcoholization (reduction of the alcohol content). Currently, nanofiltration is authorized to reduce the level of volatile acidity in wine when used with ion exchange. Ultrafiltration is authorized for use to remove proteinaceous material from wine; to reduce harsh tannic material from white wine produced from white skinned grapes; to remove pink color from blanc de noir wine; and to separate red wine into high color and low color wine fractions for blending purposes. Ultrafiltration has also been administratively approved to separate red juice into low color and high color fractions. (The administrative approval for ultrafiltration is discussed later in this document.)

Both nanofiltration and ultrafiltration are capable of reducing alcohol content in wine, and this proposed liberalization will provide industry members with more tools to reduce the alcohol content of wine. However, as required with those processes for dealcoholization currently authorized in § 24.248 (reverse osmosis, osmotic

transport, and spinning cone column), ultrafiltration and nanofiltration, when used to reduce the alcohol content of wine, must take place on distilled spirits plant premises. TTB also is proposing to place nanofiltration, ultrafiltration, and reverse osmosis under the umbrella term ''cross flow filtration.'' In cross flow filtration, the wine is passed across the filter membrane (tangentially) at positive pressure relative to the permeate side. A proportion of the wine which is smaller than the membrane pore size passes through the membrane as permeate or filtrate; everything else is retained on the feed side of the membrane as retentate. TTB is adding this definition of ''cross flow filtration'' as a footnote to the table at the end of § 24.248.

Reverse Osmosis in Combination With Osmotic Transport

TTB administratively approved several requests to use reverse osmosis in combination with osmotic transport to reduce the ethyl alcohol content in wine. Reverse osmosis and osmotic transport are both separately listed in § 24.248 as approved wine treatment processes to reduce the ethyl alcohol content of wine. Under this combined process, the wine to be treated is separated by reverse osmosis into two portions called permeate and concentrate streams. The alcohol rich permeate is then degassed, warmed, and pumped along one side of a completely hydrophobic microporous osmotic transport membrane, which is used to separate out the alcohol. The dealcoholized permeate is then recombined with the wine from which it was extracted, thus lowering the alcohol content of the wine.

TTB is proposing to amend the table at the end of § 24.248 by revising the listings for reverse osmosis and osmotic transport to state that each process can be used in combination with the other to reduce the ethyl alcohol content of wine. These processes, whether used separately or in combination, must take place on distilled spirits plant premises.

Ultrafiltration

In two separate requests, an industry member requested to use ultrafiltration to separate red grape juice into high and low color fractions for blending purposes, and to separate white grape juice that had darkened due to oxidation during storage into high and low color fractions for blending purposes. As described above, ultrafiltration is authorized for use under § 24.248 to remove proteinaceous material from wine; to reduce harsh tannic material from white wine produced from white skinned grapes; to remove pink color from blanc de noir wine; and to separate red wine into low color and high color wine fractions for blending purposes. Since ultrafiltration is currently authorized under § 24.248 to separate red wine into low color and high color fractions for blending, TTB administratively approved use of ultrafiltration to separate red grape juice into low and high color fractions and is proposing to amend the table at the end of § 24.248 accordingly. TTB did not administratively approve the use of ultrafiltration to separate high and low colored fractions of discolored white grape juice, but as discussed under the heading ''Other Issues for Public Comment and Possible Regulatory Action'' in this document, invites comments on whether this practice constitutes good commercial practice.

Use of Wood To Treat Natural Wine

Section 24.246 currently authorizes the use of uncharred and untreated oak chips or particles to smooth wine. TTB's predecessor agency had a longstanding policy allowing the use of ''toasted'' wood as a wine treating material, and TTB has issued several private letter rulings allowing this use. In addition, wooden storage tanks used for the addition of spirits to wine may be used for the baking of wine under § 24.225.

TTB is proposing a new 27 CFR 24.185 to clarify TTB's policy on the treatment of wine with wood contact. Section 24.185(a) would clarify that natural wine may be treated by contact with any wood that is consistent with the food additive requirements under the FD&C Act and that wood may be toasted, but not charred. Toasted wood refers to wood that has been heated but has not undergone combustion (that is, hasn't been burned or blackened). TTB is authorizing the use of toasted wood in this proposal. Section 24.185(b) would state TTB's position on the use of wood essences and extracts in the production of wine.

TTB is also proposing to remove the last sentence from § 24.225 (''Wooden storage tanks used for the addition of spirits may be used for the baking of wine'') and include it in the new § 24.185, and to remove the reference to oak chips from § 24.246 and include it in new § 24.185, in an effort to maintain in one location all regulatory provisions pertaining to the treatment of wine with wood.

Wine Spirits/Revision of § 24.225

TTB is proposing to amend § 24.225 by removing the last sentence as described above, by revising the section heading, and by dividing the text into paragraph (a), covering withdrawal of spirits, paragraph (b), covering production and use of wine spirits, and paragraph (c), covering spirits other than wine spirits, and by otherwise revising the text, in order to accomplish the following:

- To incorporate the terms of section 5373(a) of the IRC related to standards for the production of wine spirits, including that portion of section 5373(a) that reads, ''where, in the production of natural wine or special natural wine, sugar has been used, the wine or the residuum thereof may not be used if the unfermented sugars therein have been refermented.'' The proposed text clarifies and simplifies this statutory language without changing the meaning or intent, which TTB believes is to prevent the production of wine spirits by refermenting wine to develop alcohol from sugar added to the wine after fermentation.
- To allow the use of lower-proof spirits in wine production in certain circumstances. Section 5373(a) of the IRC sets a general standard of 140 degrees of proof or above for wine spirits used in wine production but also provides for two exceptions to this rule: (1) Distillation may be at less than 140 degrees of proof if regulations so provide; and (2) commercial brandy aged in wood for not less than 2 years, and barreled at not less than 100 degrees of proof, is deemed to be wine spirits for purposes of section 5373(a). TTB believes that allowing the byproducts of alcohol reduction to be used as wine spirits if they are 100 degrees of proof or more is consistent with the intent of the statute. TTB notes that these alcohol reduction treatments, which are listed in § 24.248, must be performed at a qualified distilled spirits plant because they result in a spirits byproduct. Thus, when the wine subjected to alcohol reduction is natural wine or special natural wine (and is subject to the other conditions of section 5373(a) and § 24.225), the alcohol-containing byproduct would still constitute wine spirits even though the spirits may not have been distilled at or above 140 degrees of proof. Accordingly, TTB is proposing, in revised § 24.225, to allow spirits derived from authorized alcohol reduction treatments to be used as wine spirits if the spirits were distilled at 100 degrees of proof or more and if the spirits conform to the other terms of section 5373(a) as reflected in the revised regulatory text.
- To clarify the status of wine spirits derived from special natural wine. This source of spirits was codified in section 5373(a) of the IRC, which also authorized the Secretary of the Treasury

to impose conditions on the use of special natural wine to make wine spirits. TTB is proposing to specify in the revised text that wine spirits derived from special natural wine may only be used in the production of special natural wine when such wine spirits contain a distinctive flavor from the ingredients used in the originating special natural wine.

Within the proposed new paragraph (b) text, subparagraphs (1) through (3) primarily reflect the terms of section 5373(a) of the IRC that TTB believes should be reflected in the regulatory text as discussed above, and subparagraph (4) primarily reflects the existing § 24.225 text.

Accidental Water Additions

TTB is proposing to add a new 27 CFR 24.251, to provide for the correction of standard wine when the wine becomes other than standard wine due to accidental water additions in excess of the authorized levels provided for in 27 CFR part 24, subparts F and L. Accidental water additions can occur during production of wine at various stages, for example during filtration when water is accidentally left in a tank that is later filled with wine. TTB has received requests from industry members who wish to be allowed to take corrective action regarding these water additions. To correct wine that has been diluted with water is referred to within TTB as ''to salvage.''

The most common way to salvage wine is to remove the water accidentally added to the wine through the use of reverse osmosis, in combination with distillation. The reverse osmosis creates a colorless and flavorless permeate, essentially consisting of alcohol and water. The permeate is distilled to create a high ethanol fraction and a low ethanol fraction. The high ethanol fraction is returned to the wine and the low ethanol fraction is discarded. Through the use of reverse osmosis and distillation, the industry member removes the accidentally added water and raises the alcohol by volume of the wine back to its level before the accidental water addition, without affecting the vinous character of the wine.

TTB has approved the use of reverse osmosis and distillation to remove water from wine under TTB's authority in § 24.249. In those reviews, TTB considered how the accidental water addition occurred, the ratio of water to wine, and whether or not the requesting industry member has submitted similar requests in the past. TTB applied the following conditions to those approvals. The industry member must:

- Return the wine to its original condition;
- Transfer the wine to and from the distilled spirits plant for treatment in bond;
- Not remove more water than was accidentally added;
- Not alter the vinous character of the wine; and
- Keep the usual and customary records of the processing.

TTB believes that proprietors should have the authority to remove small amounts of accidentally added water from wine using reverse osmosis and distillation without first seeking TTB approval. Proposed § 24.251 sets forth authority and standards to allow for removal of accidental additions of water of not more than 10 percent of the original volume of the wine without the need to first seek TTB approval. Proposed § 24.251 also allows the appropriate TTB officer to approve other removals of accidentally added water upon application by a proprietor and sets forth the requirements for submitting an application to TTB. It also specifies that, in evaluating any request under this section, the appropriate TTB officer may consider as a factor whether the proprietor has demonstrated good commercial practices, taking into account the proprietor's prior history of accidental dilutions of water to wine and of compliance with other regulations in part 24.

TTB has also received requests to allow wine to be salvaged by blending the accidentally diluted wine with standard wine to reduce the level of unauthorized water addition to less than 1 percent of the volume of the blended wine. The requesters have asserted that, since § 24.246 provides that when a wine or juice treating material is used and water is added to facilitate the solution or dispersal of the material, the volume of water added may not exceed 1 percent of the juice or wine, reduction of the accidentally added water to less than 1 percent by blending wines meets the intent of the regulations. TTB has not approved these requests because the accidental addition of water renders the wine an ''other than standard'' wine, and such wine cannot be blended with standard wine. Also, TTB's authority to approve experimental or new wine treatments under §§ 24.249 and 24.250 does not extend to blending of wine, which is not a wine treatment or process. Additionally, wine diluted with water in excess of that permitted in part 24 renders the wine ''other than standard'' (see 27 CFR 24.218). Section 24.218 provides that other than standard wine must be segregated from standard wine, and accordingly the blending of standard and other than standard wine generally is not permitted under TTB's regulations.

While TTB has not previously approved these requests, TTB notes that current § 24.246 permits the addition to wine of a limited amount of water with a wine treating material without affecting the classification of the wine as a standard wine. Accordingly, TTB believes that the regulations should be changed to recognize that the accidental addition of water to a standard wine that represents 1 percent or less of the total volume of the wine does not render the wine other than standard. TTB also believes that blending wine should be permitted to reduce the accidentally added water to 1 percent or less of the total volume of the blended wine, and the resultant blended wine should be considered standard wine. Accordingly, TTB has incorporated these two provisions into a new section, proposed § 24.186, with a reference to a new § 24.251, regarding accidental additions of water to wine.

Other Proposed Regulatory Amendments

In addition to the changes discussed above, this document includes the following proposed regulatory amendments:

Definitions

As a consequence of the proposed changes to § 24.225(a), discussed above, TTB is proposing to revise the definition of ''wine spirits'' in § 24.10 to include a reference to that regulatory provision.

Wood Essences

TTB is proposing to amend § 24.85, which concerns essences, by adding the term ''wood'' as an additional example of a source material for essences used in the production of formula wine. (The TTB regulations at 27 CFR 24.10 define formula wine as special natural wine, agricultural wine, and other than standard wine (except for distilling material and vinegar stock) produced on bonded wine permises under an approval formula.) TTB believes that it is appropriate to add wood to this provision to reflect a longstanding policy that an extract of wood made using any solvent but wine should be treated as an essence or flavoring material.

List of Authorized Wine and Juice Treating Materials

TTB is proposing to amend the heading in paragraph (a) of § 24.246 to read ''Wine and juice'' rather than just ''Wine.'' This is a clarifying change. TTB is also proposing numerous

technical and clarifying changes to the table in § 24.246. A significant portion of these technical changes involves revising the measurement references specified for the limitation on use of the authorized wine treating materials by making the notation of units of measurement consistent throughout the chart, supplying closing parentheses where they were absent, and removing decimal points followed only by zeroes. In addition, where units are only in U.S. Common (English) units or SI (International Standard, or metric) units, TTB is adding the other unit of measure for reference purposes, where appropriate. Since the majority of the units are expressed in U.S. Common units first and then in SI units, TTB is proposing to continue with that convention. TTB is including a footnote reference after each use of ppm and ppb in the chart to indicate parts per million and parts per billion, respectively. TTB is also including a definition of the word ''stabilize'' at the end of the chart and footnoting every appearance of the word ''stabilize'' with a ''1'' in the table. TTB is also adding a third column to the table in § 24.246 titled ''FDA reference''. This new column contains references to relevant FDA regulations in title 21 of the CFR, FDA GRAS notifications, and FDA advisory opinions. These references have been moved to this new column wherever such a reference appears in the table. The ''FDA reference'' column provides a limit or reference where there is no ''Specific limit'' listed for a wine treating material.

FDA recently provided TTB with a new advisory opinion dated September 8, 2016, updating their acceptance of TTB's approval for certain materials as wine and juice treating materials. This new advisory opinion was necessary because in some cases, TTB's current listing of FDA's acceptance of the material as a wine treating material was not entirely accurate because those references were not specific to the use of wine. In other cases, references to old advisory opinions were subsequently revoked by FDA rulemaking. TTB is replacing the current FDA references in § 24.246 with an updated reference to an advisory opinion in which FDA stated ''We have evaluated the list of substances * * * along with their proposed limitations for use in wine and juice treatment and conclude that they are safe under the conditions of their intended use. We would not question a conclusion that these uses of substances added to wine would be generally recognized as safe (GRAS).'' Accordingly, TTB is updating the FDA reference for: Acetaldehyde, activated carbon, albumen (egg white), casein, potassium salt of casein, gelatin, potassium bi-tartrate, silica gel (colloidal silicon dioxide), and tannin.

FDA also provided TTB with an advisory opinion dated August 29, 2016, regarding the use of current and proposed yeast nutrients. With regard to current yeast nutrients, FDA indicated that the use of yeast nutrients as a treatment for wine is not listed in its regulations or GRAS notices. FDA did, however, state: ''We have evaluated the list of yeast nutrients * * * along with their proposed limitations for use prior to and during juice fermentations for wine production, taking into consideration: (1) Their likely consumption by yeasts and bacteria [is] likely to be largely consumed during fermentations and (2) their likely presence in finished wine products at levels that would not exceed those in unprocessed grape juice. We conclude that [the] increase in human dietary exposure to the substances resulting from their addition to wine juice is de minimis with respect to human nutrition, [and that] they are safe under the conditions of their intended use. Such levels would be far below any level that would result in a safety concern for any of these substances. Thus, we would not consider this very low level exposure to be significant and we would not question a conclusion that these uses of substances added to wine as yeast nutrients would be GRAS.'' Accordingly, TTB is updating the FDA reference for calcium panthothenate, soy flour, thiamine, yeast autolyzed, and yeast cell wall/membranes of autolyzed yeast.

Due to the large number of proposed changes to § 24.246, this document presents those changes as a revision of the entire section. Finally, TTB is proposing to make the following other changes to the current entries in the table:

- *Activated carbon:* One of the entries in the ''Materials and use'' column currently refers to removing color in wine and/or juice from which the wine was produced. TTB is proposing to refer instead to removing color from wine and/or juice, for clarity.
- *Albumen:* In the ''Specific limitation'' column, TTB is adding the words ''of brine'' in the second sentence after the word ''Usage'' and removing the words ''of solution.''
- *Ammonium phosphate (mono- and di basic):* TTB is revising the name of the material to include ''diammonium phosphate'' and including it on the list of yeast nutrients in the table in § 24.246. (TTB is also making a conforming change revising the name of the material in § 24.247.)
- *Calcium carbonate:* TTB is adding the abbreviation ''$CaCO_3$'' and, in the ''Materials and use'' column, TTB is replacing the word ''and'' with the word ''or'' in the first use entry and replacing the word ''A'' with the words ''As a'' in the second use entry.
- *Casein, potassium salt of casein:* In the ''Specific limitation'' column, TTB is referring only to the citation ''27 CFR 24.243'' and removing references to FDA's GRAS opinions.
- *Citric acid:* In the ''Materials and use'' column, TTB is adding the words ''certain juice or'' after the word ''in'' in the first use entry. The limitations on what types of juice or wine may be treated with citric acid may be found in the regulations cited in the ''Specific limitation'' column.
- *Copper sulfate:* In the ''Specific limitation'' column, TTB is removing the word ''added'' after the word ''sulfate'' and adding the words ''added to wine'' after the first parenthetical.
- *Dimethyl dicarbonate:* For purposes of clarity, TTB is adding the abbreviation ''(DMDC)'' after the material name ''Dimethyl dicarbonate'' and removing the phrases ''dealcoholized wine,'' and ''low alcohol wine,'' from the entry to reduce redundancy.
- *Ferrocyanide:* TTB believes that ferrocyanide compounds are no longer available on the United States market and no longer being used by the U.S. wine industry. Accordingly, TTB is removing ''ferrocyanide'' from the list of authorized wine treating materials.
- *Milk products:* With the publication of T.D. ATF–350 (58 FR 52222) in the **Federal Register** on October 7, 1993, ATF approved the use of milk products as a fining agent in white grape wine or sherry. With the publication of T.D. TTB–17 (69 FR 67639) in the **Federal Register** on November 19, 2004, TTB extended this approval to all wines. The listing in § 24.246 for the use of milk products, revised in 2004, reads, ''Fining agent for grape wine or sherry.'' TTB believes this phrase may cause confusion because under the standards of identity in § 4.21(a) sherry is a grape wine. Accordingly, TTB is amending the first listed use in the ''Materials and use'' column for this entry to read: ''Fining agent for grape wine.''
- *Oxygen and compressed air:* In the ''Materials and use'' column, TTB is replacing the words ''May be used in juice and wine'' with the words ''Various uses in juice and wine.''
- *Polyvinyl-polypry-rolidone (PVPP):* In the ''Materials and use'' column, TTB is making a technical change by

removing the phrase ''black wine.'' In the ''Specific limitation'' column, TTB is replacing the two asterisk footnote references with a reference to footnote ''3'' after the abbreviation ''AOAC.''

• *Sorbic acid and potassium salt of sorbic acid:* In the ''Materials and use'' column, TTB is adding the words ''potassium sorbate'' in parentheses before the colon.

• *Sulfur dioxide:* Sulfur dioxide was added to the list of approved materials with the issuance of T.D. Internal Revenue Service (IRS)–6475 (25 FR 6184) in 1960. At that time, the stated use of sulfur dioxide was to sterilize and preserve wine. The list of authorized treating materials in 1960 was codified in 26 CFR 240.1051 and was titled ''Materials authorized for treatment of wine.''

Through the publication of T.D. ATF–182 (49 FR 37510) in 1984, ATF retitled the list of authorized wine treating materials as ''Materials authorized for treatment of wine and juice.'' In T.D. ATF–182, the comment discussion refers to the use of sulfur dioxide in wine as ''necessary, common to, and historically documented in winemaking,'' and it is further referred to in the use of juice for purposes of winemaking twice on page 37513, under the subheading Antimicrobial Agents. Sulfur dioxide is GRAS in the FDA regulations at 21 CFR 182.3862 as a chemical preservative. Section 182.3862 states that sulfur dioxide cannot be applied to fruit that is intended to be served or sold raw to consumers. Juice to be used in the production of wine is not fruit to be served or sold raw to consumers; thus, the use of sulfur dioxide in juice that will be used in the production of wine is GRAS. Further, 27 CFR 24.176 authorizes the use of sterilizing agents in juice. Accordingly, TTB is correcting the entry for sulfur dioxide to include its use in juice.

• *Thiamine hydrochloride:* As noted above, the yeast nutrient Thiamine hydrochloride will be re-organized and grouped under the heading, ''Yeast nutrients'' with the other yeast nutrients.

• *Shall vs. must:* Finally, to promote the use of plain language, TTB is also proposing to change ''shall'' to ''must'' wherever the former appears in the affected regulations.

TTB is proposing to amend § 24.250(a)(4) to require that an industry member must provide documentary evidence from the FDA showing that the proposed material is consistent with the food additive requirements under the FD&C Act for its intended purpose in the amounts proposed for the particular treatment contemplated. This differs from the original text in that it is not requiring documentary evidence that the FDA has ''approved'' the use of the proposed material. This editorial change is consistent with similar changes in §§ 24.246 and 24.248.

Other Issues for Public Comment and Possible Regulatory Action

In addition to the comments TTB is soliciting on the proposed regulatory changes contained in this document, as discussed above, TTB is inviting public comments on a number of other regulatory issues to assist TTB in determining whether it would be appropriate to incorporate additional changes to part 24 in a final rule. Most of these issues were raised in petitions for rulemaking or arose in connection with wine treatment approval requests under §§ 24.249 or 24.250, and in each case, TTB determined that more information would be required before a decision could be taken on whether, and if so how, appropriate regulatory changes should be proposed. The issues in question, and the specific points on which TTB is requesting public comments, are outlined below.

TTB requests comments and, where appropriate, evidence supporting the position that the particular wine treatment is consistent with good commercial practice. If applicable, use rates should be recommended, and the rationale as to why those use rates are recommended should be stated in any comments.

Alcoholic Oak Extract

In 2008, Oak Tannin Technologies submitted a petition to amend the regulations to allow ''alcoholic oak extracts for use in natural wines as a stabilizing, enriching and integrating agent.'' The petitioner stated that use of such extracts in wine is approved by the South African Wine and Spirit Board. However, TTB understands that South Africa passed legislation that actually prohibits the use of such extracts in natural wines. In addition, TTB and its predecessor agencies' longstanding policy has been to treat such materials as essences or extracts, which, under § 24.85, may be used only in the production of formula wines except agricultural wine.

As noted earlier in this document, TTB approves the use of wine treating materials for, among other things, the stabilization, clarification, and filtration of natural wine based on the materials' acceptance in good commercial practice. In order to assist TTB in determining whether it would be appropriate to propose a specific regulatory change in response to this petition, TTB is inviting comments regarding the use of an alcoholic oak extract in the production of natural wines, in particular, as a material for use as a wine stabilizer, but also for any other purpose that is consistent with good commercial practice. TTB also advises that a manufacturer of alcoholic oak extract must contact FDA and go through the FDA pre-market review processes.

Lactic Acid

In 2007, Hyman, Philips, & McNamara, P.C. petitioned TTB to amend 27 CFR 24.182 and 24.246 to allow use of lactic acid in juice, must, and wine prior to fermentation. Lactic acid is most commonly found in dairy products and is a common component in both plant and animal metabolic processes. Under § 24.246, lactic acid is currently authorized for use in grape wine to correct natural acid deficiencies. In the table in § 24.246, the entry in the ''Reference or limitation'' column for lactic acid simply provides a citation to 27 CFR 24.182 and 24.192. Section 24.192 then refers back to the limitations on the use of acid, among other things, prescribed in § 24.182. The regulations in § 24.182 state that acids of the kinds occurring in grapes or other fruit (including berries) may be added within the limitations of § 24.246 to juice or wine in order to correct natural deficiencies. Section 24.182 also states that, after fermentation is completed, citric acid, fumaric acid, malic acid, lactic acid, or tartaric acid, or a combination of two or more of these acids, may be added to correct natural deficiencies. The petitioner noted that lactic acid is currently allowed by § 24.246 for treatment of wine after fermentation and provided evidence that lactic acid may be added before fermentation in certain other countries. Further, the petitioner noted that lactic acid is less expensive and more reliably available than tartaric acid.

TTB is not proposing any changes to the regulations concerning the use of lactic acid in this document; however, TTB invites comments regarding whether or not the use of lactic acid prior to fermentation is good commercial practice in the production of natural wine. Comments should address whether or not lactic acid should be authorized for use prior to the fermentation of natural wine and provide detailed evidence supporting the stated position.

Reverse Osmosis To Enhance the Phenol Flavor and Characteristics of Wine and To Reduce the Water Content of Standard Wine

Section 24.248 currently provides for the use of reverse osmosis to reduce the ethyl alcohol content of wine and to remove off flavors in wine. However, in 2014, Constellation Wines U.S. Inc. submitted a petition to TTB requesting an expansion of the authorized uses of reverse osmosis in § 24.248 to include (1) improving the phenol and flavor character of wine, and (2) reducing the water content in standard wine. The petition included the following arguments in support of this change:

- Reverse osmosis can effectively eliminate the weak and watery character of the retentate (which, as a product of the reverse osmosis process, is considered to be standard wine but with reduced levels of alcohol and water), resulting in a wine with improved phenol and flavor characteristics.
- The present situation puts U.S. winemakers at a competitive disadvantage in the global marketplace in two ways. First, the petitioner asserts that many foreign countries permit the use of reverse osmosis as an acceptable winemaking practice to concentrate phenols and flavors in wine and in grape must. Exported U.S. wines, which cannot be produced in this way under the current regulations, would not reflect these characteristics in those foreign markets. Second, under the terms of section 5382 of the IRC, most imported wines that were subjected to such a process would be allowed to compete in the U.S. market against domestic wines to which that process may not be applied.
- Reverse osmosis benefits grape growers, winemakers, and consumers. The expanded use of reverse osmosis would allow grape growers to sell more grapes, particularly those of marginal quality, to winemakers who could produce better quality standard wine with such grapes. Winemakers would be able to produce better quality wine at lower costs, and consumers would be able to purchase better quality wine at lower prices.
- The expanded use of reverse osmosis would provide winemakers with better ability to regulate the alcohol content of wines.

TTB notes that the byproduct of reverse osmosis (the retentate) is only considered to be standard wine if the wine that was processed with reverse osmosis was standard wine. TTB understands that the European Union (EU) only authorizes the use of reverse osmosis to remove water from wine in cold and wet regions and that wine produced with the use of reverse osmosis in the EU must be labeled as ''table wine.'' TTB's counterparts in Australia indicate that while authorized, reverse osmosis is not a process officially recognized in the Australia New Zealand Food Standards Code, and is not used frequently. TTB understands that South Africa authorizes the use of reverse osmosis on juice but not wine.

TTB has not received other requests from industry members to use reverse osmosis to improve the phenol and flavor character of wine. However, TTB did receive a request to use reverse osmosis to improve the ''sensory quality'' of finished wines and to evaluate the potential sensory benefit of water content reduction compared to the resultant loss of volume.

TTB has received and approved industry member requests to use reverse osmosis in combination with distillation to reduce the water content of wine only for the purpose of salvage, discussed above, rather than as a winemaking process to improve the character of the wine. In salvage, the removal of water returns the wine to its previous condition and, as a condition of approval, TTB strictly limited the amount of water to be removed to no more than the amount that had been accidentally added to the wine.

TTB believes that it should provide the public the opportunity to comment before it makes a decision on whether the removal of water from wine to improve the characteristics of the wine would be acceptable in good commercial practice. To assist TTB in deciding whether to adopt any specific regulatory change in this regard, TTB is inviting comments on whether the use of reverse osmosis to reduce the water content of wine, improve the phenol and flavor character of wine, or to improve the sensory quality of the wine would be acceptable in good commercial practice.

If you believe that the use of reverse osmosis for these purposes is consistent with good commercial practice, your comments should explain your position in detail, as well as provide guidelines/standards concerning how much water (maximum percentage) may be removed. If you believe that the use of reverse osmosis for these purposes is not consistent with good commercial practice, your comments should explain your position in detail.

Ultrafiltration

As previously discussed, an industry member requested to use ultrafiltration to separate white grape juice that had darkened due to oxidation during storage into high and low color fractions for blending purposes. The low color fraction would be blended with white wine, and the high color fraction would be blended with red wine. Ultrafiltration is authorized for use under § 24.248 to separate red wine into low color and high color wine fractions for blending purposes; but the regulations do not provide for the use of ultrafiltration to separate white wine.

TTB believes it should provide the public with the opportunity to comment before it makes a decision on whether the use of ultrafiltration to separate discolored wine for blending as described above would be acceptable in good commercial practice. If you wish to submit a comment on this matter, your comment should explain in detail your position as to why the use of ultrafiltration in this manner is or is not acceptable in good commercial practice.

Yeast Nutrients (Gusmer Petition)

The following list of vitamins and minerals were proposed in the Gusmer petition as yeast nutrients in the production of wine but have not been administratively approved by TTB pursuant to § 24.250: Cobalamin (vitamin B12), iodine (potassium iodide), iron, manganese sulfate, nickel, potassium chloride, riboflavin (Vitamin B2), and zinc sulfate. With the exception of riboflavin, TTB has not received requests under §§ 24.249 or 24.250 to use these vitamins and minerals as yeast nutrients in the production of wine. TTB did not administratively approve the use of riboflavin as a yeast nutrient because the evidence submitted with the request was not sufficient to conclude that the use of riboflavin as a yeast nutrient is consistent with good commercial practice. Gusmer provided information on the FDA regulatory status, functional roles, and use rates for the following vitamins and minerals as yeast nutrients. TTB is interested in receiving comments supporting or rejecting the argument that the use of these vitamins and minerals as yeast nutrients in the production of wine is consistent with good commercial practice. Unless otherwise noted, the information that follows was supplied by Gusmer.

- *Cobalamin (vitamin B12):* Cobalamin is used to promote growth of yeast, and Gusmer proposed that cobalamin be used at a rate not to exceed 15 ppb.
- *Iodine (potassium iodide):* Iodine is required for yeast growth and fermentation, and Gusmer proposed that iodine be used at a rate not to exceed 10 ppb.

• *Iron:* Iron is a catalyst for oxidation reactions, and Gusmer proposed that iron be used at a rate not to exceed 2 ppm.

• *Manganese sulfate:* Manganese sulfate is a pale pink, odorless powder that is freely soluble in water and insoluble in alcohol. Gusmer proposed that manganese sulfate be used at a rate not to exceed 100 ppb.

• *Nickel:* Nickel is a catalyst for hydrogenation, and Gusmer proposed that nickel be used at a rate not to exceed 5 ppm.

• *Potassium chloride:* Potassium chloride is a salt that disassociates into ions that are necessary for phosphate uptake by yeast. Gusmer proposed that potassium chloride be used at a rate not to exceed 100 ppm.

• *Riboflavin (vitamin B2):* Riboflavin is used as a coenzyme in oxidation/reduction reactions, and Gusmer proposed riboflavin be used at a rate not to exceed 600 ppb.

• *Zinc sulfate:* Zinc sulfate increases alcohol tolerance, and Gusmer proposed zinc sulfate be used at a rate not to exceed 1.5 ppm.

Public Participation

Comments Sought

TTB requests comments from the public and all interested parties. TTB is particularly interested in comments that address the question of whether a particular material, process, or practice addressed in this document is consistent with good commercial practice. Please support your comment with specific information about the material, process, or practice in question.

After TTB analyzes any comments received in response to the regulatory amendments TTB has proposed in this document, we plan to issue a final rule. If TTB receives comments and evidence that persuade it that the use of a particular wine treating material or process is not consistent with good commercial practice, TTB will not include it in the final rule. As a result, and as stated in previously issued administrative approvals, if TTB has determined that the use of a wine or juice treating material or process is not consistent with good commercial practice, previous approvals of that wine or juice treating material or process will be rescinded by operation of law on the effective date of the final rule.

Additionally, if TTB has determined that the authorized amount of a wine or juice treating material should be decreased because its current authorized amount is not consistent with good commercial practice, previous approvals authorizing the higher amount of that wine or juice treating material will be rescinded on the effective date of the final rule. Wines produced using treatments pursuant to an administrative approval that has been rescinded based upon this rulemaking may nevertheless be labeled as if the materials or processes were authorized, provided such treatments were used prior to the date of rescission.

Submitting Comments

You may submit comments on the proposals described in this document by using one of the following three methods:

• *Federal e-Rulemaking Portal:* You may send comments via the online comment form linked to this document in Docket No. TTB–2016–0010 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* Direct links to the comment form and docket are available under Notice No. 164 on the TTB Web site at *https://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov*. For information on how to use *Regulations.gov*, click on the site's Help tab.

• *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.

• *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 164 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, *Regulations.gov*, TTB will post, and the public may view, copies of this document, selected supporting materials, and any electronic or mailed comments TTB receives about this proposal. A direct link to the *Regulations.gov* docket containing this document and the posted comments on it is available on the TTB Web site at *https://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 164. You may also reach the docket containing this document and the posted comments received on it through the *Regulations.gov* search page at *https://www.regulations.gov.*

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that TTB considers unsuitable for posting.

You and other members of the public may view copies of this document, all supporting materials, and any electronic or mailed comments TTB receives about these proposals by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), TTB certifies that these proposed regulations, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule provides for the voluntary use of additional wine and juice treating materials and

processes in the production of wine. This authorization does not impose any required change to current winemaking practices, nor does it impose additional compliance burden on small businesses. TTB authorizes new wine treating materials and processes by evaluating proprietors' requests to experiment with such materials and processes, such requests being made via letterhead application to TTB. This rule, if adopted, would allow for certain treatments, under limited circumstances, without the submission of a letterhead application to TTB. TTB estimates that the proposed regulation will reduce the number of respondents by approximately 10 applicants per year, thus slightly reducing the overall burden of the information collection.

In addition, TTB currently requires wineries to maintain usual and customary business records. Included in these records are those records that evidence the details and results of experiments approved by TTB under § 24.249. This recordkeeping requirement remains unchanged by this proposal as wineries subject to this part still will be required to maintain those usual and customary records. This proposal has a neutral effect on the current recordkeeping requirements.

Because this proposed rule will not have a significant economic impact on a substantial number of small entities no regulatory flexibility analysis is required. Pursuant to 26 U.S.C. 7805(f), TTB will submit the proposed regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small businesses.

Paperwork Reduction Act

Two collections of information approved by the Office of Management and Budget (OMB) would be affected by the adoption of the proposed regulatory changes described in this document. These collections of information, approved in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), are assigned control numbers 1513–0057, titled, ''Letterhead Applications and Notices Relating to Wine (TTB REC 5120/2),'' and 1513–0115, titled ''Usual and Customary Business Records Relating to Wine (TTB REC 5120/1).'' 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 control number assigned by OMB.

OMB Control Number 1513–0057

TTB authorizes new wine treating materials and processes by evaluating proprietors' requests to experiment with such materials and processes under § 24.249. Section 24.249 states, in part, that such requests must be made in the form of an application filed with TTB. Under this authorization, TTB has approved proprietors' requests to take corrective action when water has been accidentally added to wine in amounts exceeding those authorized for the production of standard wine under 27 CFR part 24. In this notice, TTB is proposing to add a new § 24.251 to provide for the correction of accidentally diluted wine under certain circumstances without the submission of a letterhead application to TTB. TTB estimates that the proposed regulation will reduce the number of respondents by approximately 10 applicants per year and, therefore, will slightly reduce the information collection's overall burden.

TTB estimates that, as a result of the proposed amendments, the new annual burden for control number 1513–0057 will be as follows:

- *Estimated total annual reporting and/or recordkeeping burden:* 820 hours.
- *Estimated average annual burden hours per respondent:* 0.5 hours (30 minutes).
- *Estimated number of respondents:* 1,640.
- *Estimated annual frequency of respondents:* 1.

Comments on this collection of information should be sent to OMB to Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503; or email to *OIRA_submission@omb.eop.gov.* A copy also should be sent to the Alcohol and Tobacco Tax and Trade Bureau by any of the methods previously described. Comments on the information collection should be submitted not later than January 23, 2017.

OMB Control Number 1513–0115

Under TTB's authority in 26 U.S.C. 5367, 5369, 5370, and 5555, TTB requires wineries to maintain usual and customary business records. Included in these records are those evidencing the details and results of experiments approved by TTB under § 24.249. The proposed regulations contained in this document provide for a recordkeeping requirement in new § 24.251 when wine is corrected for accidental water dilutions. The recordkeeping requirement in this proposed section is already accounted for under OMB Control Number 1513–0115 because such requests currently are treated as experiments under § 24.249. Therefore, TTB does not believe that there is a change in the burden for this recordkeeping requirement, even for those wineries that are exempted from submitting a letterhead request under § 24.251 because still they will be required to maintain the currently required usual and customary business records.

Comments on this collection of information should be sent to OMB to Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503; or email to *OIRA_submission@omb.eop.gov.* A copy also should be sent to the Alcohol and Tobacco Tax and Trade Bureau by any of the methods previously described. Comments on the information collection should be submitted not later than January 23, 2017.

Executive Order 12866

Certain TTB regulations issued under the IRC, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required.

Drafting Information

Kara Fontaine of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau drafted this document.

List of Subjects in 27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR part 24 as follows.

PART 24—WINE

■ 1. The authority citation for 27 CFR part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 2. Section 24.10 is amended by:

■ a. Removing the number ''60'' in the definition of ''Brix'' and adding, in its place, the number ''68''; and

■ b. Revising the definition of ''Wine spirits'' to read as follows:

§ 24.10 Meaning of terms.

* * * * *

Wine spirits. Brandy or wine spirits authorized under 26 U.S.C. 5373 and § 24.225 of this part for use in wine production.

§ 24.85 [Amended]

■ 3. In § 24.85, the first sentence is amended by adding the word ''wood,'' after the word ''berries.''

■ 4. Section 24.185 is added to read as follows:

§ 24.185 Use of wood to treat natural wine.

(a) *Treatment by contact.* Natural wine may be treated by contact with any wood that is consistent with the food additive requirements under the Federal Food, Drug, and Cosmetic Act for food contact (see 21 CFR part 7). The wood may be in the form of barrels, staves, chips, particles, or storage tanks that were used for the addition of wine spirits if the tanks are used for the baking of wine. The wood may be toasted (that is, heated to low, medium, or high temperature without undergoing combustion), but not charred, and the wood must not be otherwise treated.

(b) *Use of wood essences and extracts.* A proprietor may make or purchase for blending purposes wine that has been heavily treated with wood; however, wood preparations made with an alcohol solution stronger than 24 percent alcohol by volume are essences and must be used in accordance with § 24.85. If any solvent other than alcohol or water is used to make a wood extract, the resulting extract must be consistent with the food additive requirements under the Federal Food, Drug, and Cosmetic Act for that purpose and may be used only in ''other wine'' in accordance with § 24.218. This paragraph applies to liquid extracts and essences and to the extracts and essences in powder form or dissolved in water after the solvent has been evaporated.

(c) *Use of wooden storage tanks.* Wooden storage tanks used for the addition of spirits may be used for the baking of wine.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383–1384, 1386, as amended (26 U.S.C. 5382, 5386))

■ 5. Section 24.186 is added to read as follows:

§ 24.186 Accidental additions of water.

(a) *Accidental additions of water totaling 1 percent or less of the volume of standard wine.* When in the production, storage, treatment, or finishing of standard wine water is accidentally added to a standard wine in an amount that does not exceed 1 percent of the total volume of the wine, such wine shall remain standard wine and the proprietor need not take any action to correct the wine.

(b) *Correction of accidental additions of water.* When in the production, storage, treatment, or finishing of standard wine water is accidentally added to a standard wine in an amount that exceeds 1 percent of the volume of the wine, such wine may be corrected by either:

(1) Blending the diluted wine with a quantity of wine of the same kind so that the amount of water accidentally added does not exceed 1 percent of the total volume of the blended wine; or

(2) Removal of the accidentally added water from the wine in accordance with § 24.251.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383–1384, as amended (26 U.S.C. 5382))

■ 6. Section 24.225 is revised to read as follows:

§ 24.225 Production and use of spirits.

(a) *Withdrawal of spirits.* The proprietor of a bonded wine premises may withdraw and receive wine spirits without payment of tax from the bonded premises of a distilled spirits plant for use as provided in this section.

(b) *Production and use of wine spirits.*

(1) *In general.* The only products considered to be wine spirits authorized for use in wine production under this section are brandy or wine spirits produced in a distilled spirits plant (with or without the use of water to facilitate extraction and distillation) exclusively from:

(i) Fresh or dried fruit, or their residues;

(ii) Natural wine or wine residues from fresh or dried fruit, including spirits byproducts of authorized wine treatments to reduce alcohol; or

(iii) Special natural wine. If wine spirits produced from special natural wine contain any flavor characteristics of the special natural wine, those wine spirits may be used only in the production of a special natural wine.

(2) *Distillation proof requirements.* The proof of wine spirits at distillation must not be reduced by the addition of water. In addition, a product is not considered to be wine spirits if it is distilled at less than 140 degrees of proof except in the following cases:

(i) Commercial brandy aged in wood for a period of not less than 2 years, and barreled at not less than 100 degrees of proof, shall be deemed wine spirits for purposes of this section; and

(ii) Spirits byproducts of alcohol reduction processing authorized under § 24.248 that are produced at a distilled spirits plant and distilled, if necessary, at not less than 100 degrees of proof shall be deemed wine spirits for purposes of this section.

(3) *Addition of sugar after fermentation.* When, in the production of natural wine or special natural wine, sugar has been added after fermentation, the wine may not be refermented to develop alcohol from such added sugar and then used in the production of wine spirits.

(4) *Addition of wine spirits to natural wine.*

(i) Wine spirits produced in the United States may be added to natural wine on bonded wine premises if both the wine and the spirits are produced from the same kind of fruit.

(ii) In the case of natural still wine, wine spirits may be added in any State only to wine produced by fermentation on bonded wine premises located within the same State.

(iii) If wine has been ameliorated, wine spirits may be added (whether or not wine spirits were previously added) only if the wine contains not more than 14 percent of alcohol by volume derived from fermentation.

(c) *Spirits other than wine spirits.* Spirits other than wine spirits may be received, stored, and used on bonded wine premises only for the production of nonbeverage wine and nonbeverage wine products.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381–1384, as amended, and sec. 455, Pub. L. 98–369, (26 U.S.C. 5214, 5362, 5373, 5382, 5383, 5386))

■ 7. Section 24.246 is revised to read as follows:

§ 24.246 Materials authorized for the treatment of wine and juice.

(a) *Wine and juice.* Materials used in the process of filtering, clarifying, or purifying wine may remove cloudiness, precipitation, and undesirable odors and flavors, but the addition of any substance foreign to wine that changes the character of the wine, or the abstraction of ingredients so as to change the character of the wine, if not consistent with good commercial practice, is not permitted on bonded wine premises. The materials listed in this section are approved as being consistent with good commercial practice in the production, cellar treatment, or finishing of wine and,

where applicable, in the treatment of juice, within the ''Specific TTB limitation'' of this section and subject to the following conditions:

(1) If the FDA informs TTB that a specified use or limitation of any material listed in this section is inconsistent with the food additive requirements under the Federal Food, Drug, and Cosmetic Act, the appropriate TTB officer may cancel or amend the approval for use of the material in the treatment of wine and juice in the production, cellar treatment, or finishing of wine; and

(2) Where water is added to facilitate the solution or dispersal of a material, the volume of water added, whether the material is used singly or in combination with other water-based treating materials, may not total more than 1 percent of the volume of the treated wine or juice, or of both the wine and the juice, from which the wine is produced.

(b) *Use in combination or in multiple lots.* Subject to the conditions specified in paragraph (a) of this section, a proprietor may use the materials listed in this section in combination, provided that each material is used for its specified use and in accordance with any limitation specified for that use. If a proprietor uses several lots that contain the same material, it is the proprietor's responsibility to ensure that the cumulative amount of the material does not exceed the limitation specified in this section for that material.

(c) *Formula wine.* In addition to the materials listed in this section, other materials may be used in formula wine if approved for such use.

MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE

Materials and use	Specific TTB limitation (if applicable)	FDA reference
Acacia (gum arabic): To clarify and stabilize [1] wine.	The amount used must not exceed 8 pounds per 1000 gallons (1.92 g/L) of wine.	21 CFR 184.1330.
Acetaldehyde: For color stabilization of juice prior to concentration.	The amount used must not exceed 300 ppm,[2] and the finished concentrate must have no detectable level of the material.	FDA advisory opinion dated September 8, 2016.
Activated carbon:		
To assist precipitation during fermentation.	27 CFR 24.176	FDA advisory opinion dated September 8, 2016.
To clarify and purify wine	The amount used to clarify and purify wine must be included in the total amount of activated carbon used to remove excessive color in wine. 27 CFR 24.241 and 24.242.	FDA advisory opinion dated January 26, 1979.
To remove color from wine and/or juice from which wine is produced.	The amount used to treat the wine, including the juice from which the wine was produced, must not exceed 25 pounds per 1000 gallons (3 g/L). If the amount necessary exceeds this limit, a notice is required pursuant to 27 CFR 24.242.	FDA advisory opinion dated January 26, 1979.
Albumen (egg white): Fining agent for wine	May be prepared in a light brine 1 ounce (28.35 grams) potassium chloride, 2 pounds (907.2 grams) egg white, 1 gallon (3.785 L) of water. Usage of brine not to exceed 1.5 gallons per 1,000 gallons (1.5 milliliters per liter) of wine.	FDA advisory opinion dated September 8, 2016.
Alumino-silicates (hydrated) e.g., Bentonite (Wyoming clay) and Kaolin: To clarify and stabilize [1] wine or juice.	None	21 CFR 182.2727, 182.2729, 184.1155 and 186.1256. FDA advisory opinion dated July 26, 1985.
Ascorbic acid *iso*-ascorbic acid (erythorbic acid): To prevent oxidation of color and flavor components of juice or wine.	May be added to grapes, other fruit (including berries), and other primary wine making materials, or to the juice of such materials, or to the wine, within limitations which do not alter the class or type of the wine.	21 CFR 182.3013 and 182.3041.
Bakers Yeast Mannoprotein: To stabilize [1] wine from the precipitation of potassium bitartrate crystals.	The amount used must not exceed 3.3 pounds per 1000 gallons (400 mg/L) of wine.	GRAS Notice No. GRN 284.
Calcium carbonate ($CaCO_3$) (with or without calcium salts of tartaric and malic acids):		
To reduce the excess natural acids in high acid wine, or in juice prior to or during fermentation.	The natural or fixed acids must not be reduced below 40 pounds per 1000 gallons (5 g/L).	21 CFR 184.1069, 184.1099, and 184.1191.
As a fining agent for cold stabilization	The amount used must not exceed 30 pounds per 1000 gallons (3.59 g/L) of wine.	
Calcium sulfate (gypsum): To lower pH in sherry wine.	The sulfate content of the finished wine must not exceed 1.67 pounds per 1000 gallons (0.2 g/L), expressed as potassium sulfate. 27 CFR 24.214.	21 CFR 184.1230.
Carbon dioxide (including food grade dry ice): To stabilize [1] and preserve wine.	See 27 CFR 24.245	21 CFR 184.1240.
Casein, potassium salt of casein: To clarify wine.	See 27 CFR 24.243	FDA advisory opinion dated September 8, 2016.
Chitosan from *Aspergillus niger:* To remove spoilage organisms such as Brettanomyces from wine.	The amount used must not exceed 0.8 pounds per 1000 gallons (10 g/hL) of wine.	GRAS Notice No. GRN 000397.

MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE—Continued

Materials and use	Specific TTB limitation (if applicable)	FDA reference
Citric acid:		
To correct natural acid deficiencies in certain juice or wine.	See 27 CFR 24.182 and 24.192	21 CFR 184.1033.
To stabilize [1] wine other than citrus wine.	The amount of citric acid must not exceed 5.8 pounds per 1000 gallons (0.7 g/L). 27 CFR 24.244.	21 CFR 184.1033.
Copper sulfate: To remove hydrogen sulfide and/or mercaptans from wine.	The quantity of copper sulfate (calculated as copper) added to wine must not exceed 6 ppm.[2] The residual level of copper in the finished wine must not exceed 0.5 ppm [2].	21 CFR 184.1261.
Defoaming agents (polyoxyethylene 40 monostearate, silicon dioxide, dimethylpoly-siloxane, sorbitan monostearate, glyceryl monooleate and glyceryl dioleate): To control foaming, fermentation adjunct.	Defoaming agents which are 100 percent active may be used in amounts not exceeding 0.15 pounds per 1000 gallons (18 mg/L) of wine. Defoaming agents which are 30 percent active may be used in amounts not exceeding 0.5 pounds per 1000 gallons (60 mg/L) of wine. Silicon dioxide must be completely removed by filtration. The amount of silicon remaining in the wine must not exceed 10 ppm [2].	21 CFR 173.340 and 184.1505.
Dimethyl dicarbonate (DMDC): To sterilize and stabilize [1] wine.	DMDC may be added to wine in a cumulative amount not to exceed 200 ppm [2].	Must meet the conditions prescribed by FDA in 21 CFR 172.133.
Enzymatic activity: Various enzymes and uses, as shown below:	The enzyme preparation used must be prepared from nontoxic and nonpathogenic microorganisms in accordance with good manufacturing practice and be consistent with FDA's regulations.	
Carbohydrase (*alpha*-Amylase): To convert starches to fermentable carbohydrates.	The amylase enzyme activity must be derived from:	FDA advisory opinion of August 18, 1983.
	Aspergillus niger, Aspergillus oryzae, Bacillus subtilis, or barley malt; or.	
	from *Rhizopus oryzae:* or	21 CFR 173.130.
	from *Bacillus licheniformis*	21 CFR 184.1027.
Carbohydrase (*beta*-Amylase): To convert starches to fermentable carbohydrates.	The amylase enzyme must be derived from barley malt.	FDA advisory opinion dated August 18, 1983.
Carbohydrase (Glucoamylase, Amylogluco-sidase): To convert starches to fermentable carbohydrates.	The amylase enzyme activity must be derived from *Aspergillus niger, Aspergillus oryzae,* or.	FDA advisory opinion dated August 18, 1983.
	from *Rhizopus oryzae,*	21 CFR 173.130.
	or from *Rhizopus niveus*	21 CFR 173.110.
Carbohydrase (pectinase, cellulase, hemicellulase): To facilitate separation of juice from the fruit.	The enzyme activity must be derived from *Aspergillus aculeatus*.	FDA advisory opinion dated December 19, 1996.
Catalase: To clarify and stabilize [1] wine.	The enzyme activity must be derived from *Aspergillus niger* or bovine liver.	FDA advisory opinion dated August 18, 1983.
Cellulase: To clarify and stabilize [1] wine and facilitate separation of the juice from the fruit.	The enzyme activity must be derived from *Aspergillus niger*.	FDA advisory opinion dated August 18, 1983.
Cellulase (beta-glucanase): To clarify and filter wine.	The enzyme activity must be derived from *Trichoderma longibrachiatum* or *Trichoderma harzianum.* The amount used must not exceed 30 ppm [2].	For beta-gucanase derived from *Trichoderma longibrachiatum,* 21 CFR 184.1250. For beta-glucanase derived from *Trichoderma harzianum,* GRAS Notice No. GRN 149.
Glucose oxidase: To clarify and stabilize [1] wine	The enzyme activity must be derived from *Aspergillus niger*.	FDA advisory opinion of August 18, 1983.
Lysozyme: To stabilize [1] wines from malolactic acid bacterial degradation.	The amount used must not exceed 500 ppm.[2]	FDA advisory opinion dated December 15, 1993.
Pectinase: To clarify and stabilize [1] wine and to facilitate separation of juice from the fruit.	The enzyme activity used must be derived from *Aspergillus niger*.	FDA advisory opinion dated August 18, 1983.
Protease (general): To reduce or to remove heat labile proteins.	The enzyme activity must be derived from:	FDA advisory opinion dated August 18, 1983.
	Aspergillus niger or *Bacillus subtilis* or from;.	
	Bacillus licheniformis	21 CFR 184.1027.
Protease (Bromelin): To reduce or remove heat labile proteins.	The enzyme activity must be derived from *Ananus comosus* or *Ananus bracteatus (L)*.	FDA advisory opinion dated August 18, 1983.
Protease (Ficin): To reduce or remove heat labile proteins.	The enzyme activity must be derived from *Ficus spp*.	FDA advisory opinion dated August 18, 1983.
Protease (Papain): To reduce or remove heat labile proteins.	The enzyme activity must be derived from *Carica papaya (L)*.	21 CFR 184.1585.

MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE—Continued

Materials and use	Specific TTB limitation (if applicable)	FDA reference
Protease (Pepsin): To reduce or remove heat labile proteins.	The enzyme activity must be derived from porcine or bovine stomachs.	FDA advisory opinion dated August 18, 1983.
Protease (Trypsin): To reduce or remove heat labile proteins.	The enzyme activity must be derived from porcine or bovine pancreas.	FDA advisory opinion dated August 18, 1983.
Urease: To reduce levels of naturally occurring urea in wine to help prevent the formation of ethyl carbamate.	The enzyme activity must be derived from *Lactobacillus fermentum.* Use is limited to not more than 200 ppm [2] and must be filtered prior to final packaging.	21 CFR 184.1924.
Ethyl maltol: To stabilize [1] wine	Use authorized at a maximum level of 100 ppm [2] in all standard wines except natural wine produced from *Vitis vinifera* grapes.	FDA advisory opinion dated December 1, 1986.
Ferrous sulfate: To clarify and stabilize [1] wine	The amount used must not exceed 3 ounces per 1000 gallons (0.022 g/L) of wine.	21 CFR 184.1315.
Fumaric acid:		
To correct natural acid deficiencies in grape wine.	The fumaric acid content of the finished wine must not exceed 25 pounds per 1000 gallons (3 g/L). 27 CFR 24.182 and 24.192.	21 CFR 172.350.
To stabilize [1] wine	The fumaric acid content of the finished wine must not exceed 25 pounds per 1000 gallons (3 g/L). 27 CFR 24.244.	21 CFR 172.350.
Gelatin (food grade): To clarify juice or wine	None	FDA advisory opinion dated September 8, 2016.
Granular cork: To smooth wine	The amount used must not exceed 10 pounds per 1000 gallons of wine (1.2 g/L).	FDA advisory opinion dated February 25, 1985.
Isinglass: To clarify wine	None	FDA advisory opinion dated February 25, 1985.
Lactic acid: To correct natural acid deficiencies in grape wine.	27 CFR 24.182 and 24.192	21 CFR 184.1061.
Malic acid: To correct natural acid deficiencies in juice or wine.	27 CFR 24.182, 24.192	21 CFR 184.1069.
Malo-lactic bacteria: To stabilize [1] grape wine	Malo-lactic bacteria of the type *Leuconostoc oenos* may be used in treating wine.	FDA advisory opinion dated February 25, 1985.
Maltol: To stabilize [1] wine	Use authorized at a maximum level of 2 pounds per 1000 gallons (250 mg/L) in all standard wine except natural wine produced from *Vitis vinifera* grapes.	FDA advisory opinion dated December 1, 1986.
Milk products (pasteurized whole, skim, or half-and-half):		
Fining agent for grape wine	The amount used must not exceed 2 parts of milk products per 1,000 parts (0.2 percent V/V) of wine.	
To remove off flavors in wine	The amount used must not exceed 10 parts of milk products per 1,000 parts (1 percent V/V) of wine.	
Nitrogen gas: To maintain pressure during filtering and bottling or canning of wine and to prevent oxidation of wine.	None	21 CFR 184.1540.
Oxygen and compressed air: Various uses in juice and wine.	None.	
Polyvinyl-polypyr-rolidone (PVPP): To clarify and stabilize [1] wine and to remove color from red wine or juice.	The amount used to treat the wine, including the juice from which the wine was produced, must not exceed 60 pounds per 1000 gallons (7.19 g/L) and must be removed during filtration. PVPP may be used in a continuous or batch process. The finished wine must retain vinous character and must have color of not less than 0.6 Lovibond in a one-half inch cell or not more than 95 percent transmittance per AOAC Method 11.003–11.004 (14th Ed.) [3].	21 CFR 173.50.
Polyvinyl-pyrrolidone (PVP)/polyvinylimadazole (PVI) polymer: To remove heavy metal ions and sulfides from wine.	The amount used to treat the wine must not exceed 6.7 pounds per 1000 gallons (80 g/hL) of wine.	21 CFR 173.55 and FDA FCN No. 320.
Potassium bitartrate: To stabilize [1] grape wine	The amount used must not exceed 35 pounds per 1000 gallons (4.19 g/L) of grape wine.	FDA advisory opinion dated September 8, 2016.
Potassium carbonate and/or potassium bicarbonate: To reduce excess natural acidity in wine and in juice prior to or during fermentation.	The natural or fixed acids must not be reduced below 0.668 ounces per gallon (5 g/L).	21 CFR 184.1619 and 184.1613.

MATERIALS AUTHORIZED FOR TREATMENT OF WINE AND JUICE—Continued

Materials and use	Specific TTB limitation (if applicable)	FDA reference
Potassium citrate: pH control agent and sequestrant in the treatment of citrus wines.	The amount of potassium citrate must not exceed 25 pounds per 1000 gallons (3 g/L) of finished wine. 27 CFR 24.182.	21 CFR 184.1625.
Potassium meta-bisulfite: To sterilize and preserve wine.	The sulfur dioxide content of the finished wine must not exceed the limitations prescribed in 27 CFR 4.22.	21 CFR 182.3637.
Potato protein isolate: Fining agent for wine	Use must not exceed 500 ppm[2] (50 g/hL) of wine.	GRAS Notice No. GRN 000447.
Silica gel (colloidal silicon dioxide): To clarify wine or juice.	Use must not exceed the equivalent of 20 pounds colloidal silicon dioxide at a 30 percent concentration per 1000 gallons (2.4 g/L) of wine. Silicon dioxide must be completely removed by filtration.	FDA advisory opinion dated September 8, 2016.
Sodium carboxymethyl cellulose: To stabilize[1] wine by preventing tartrate precipitation.	The amount used must not exceed 0.8% of the wine.	21 CFR 182.1745.
Sorbic acid and potassium salt of sorbic acid (potassium sorbate): To sterilize and preserve wine; to inhibit mold growth and secondary fermentation.	The finished wine must not contain more than 300 ppm[2] of sorbic acid.	21 CFR 182.3089 and 182.3640.
Sulfur dioxide: To sterilize and to preserve wine or juice.	The sulfur dioxide content of the finished wine must not exceed the limitations prescribed in 27 CFR 4.22(b)(1).	21 CFR 182.3862.
Tannin:		
To adjust tannin content in apple juice or in apple wine.	The residual amount of tannin must not exceed 24 pounds per 1000 gallons (3 g/L), calculated as gallic acid equivalents (GAE). Total tannin must not be increased by more than 150 ppm[2] by the addition of tannic acid (polygalloylglucose).	FDA advisory opinion dated September 8, 2016.
To clarify, or adjust tannin content of, juice or wine (other than apple).	The residual amount of tannin, calculated in GAE, must not exceed 6.4 GAE per 1000 gallons of wine (800 mg/L) in white wine and 24 pounds per 1000 gallons (3 g/L) in red wine. Only tannin which does not impart color may be used in the cellar treatment of juice or wine. Total tannin must not be increased by more than 150 ppm[2] by the addition of tannic acid (poly-galloylglucose).	FDA advisory opinion dated September 8, 2016.
Tartaric acid (L(+) tartaric acid):		
To correct natural acid deficiencies in grape juice or wine and to reduce the pH of grape juice or wine where ameliorating material is used in the production of grape wine.	Use as prescribed in 27 CFR 24.182 and 24.192.	21 CFR 184.1099 and GRAS Notice No. GRN 000187.
Yeast nutrients: To facilitate fermentation of juice and wine		
Ammonium phosphate/diammonium phosphate (*mono-* and *di* basic).	The amount used must not exceed 8 pounds per 1000 gallons (0.96 g/L).	FDA advisory opinion dated August 29, 2016.
Biotin	The amount used must not exceed 25 ppb[4] ..	FDA advisory opinion dated August 29, 2016.
Calcium pantothenate (vitamin B5)	The amount used must not exceed 1.5 ppm[2]	FDA advisory opinion dated August 29, 2016.
Folic acid (folate)	The amount used must not exceed 100 ppb[4]	FDA advisory opinion dated August 29, 2016.
Inositol (myo-inositol)	The amount used must not exceed 2 ppm[2] ...	FDA advisory opinion dated August 29, 2016.
Magnesium sulfate	The amount used must not exceed 15 ppm[2]	FDA advisory opinion dated August 29, 2016.
Niacin (vitamin B3)	The amount used must not exceed 1 ppm[2] ...	FDA advisory opinion dated August 29, 2016.
Pyridoxine hydrochloride (vitamin B6)	The amount used must not exceed 150 ppb[4]	FDA advisory opinion dated August 29, 2016.
Soy flour (defatted)	The amount used must not exceed 2 pounds per 1000 gallons (0.24 g/L) of wine.	FDA advisory opinion dated August 29, 2016.
Thiamine hydrochloride	The amount used must not exceed 0.005 pounds per 1000 gallons (0.6 mg/L) of wine or juice.	FDA advisory opinion dated August 29, 2016.
Yeast, autolyzed	None	FDA advisory opinion dated August 29, 2016.
Yeast, cell wall/membranes of autolyzed yeast.	The amount used must not exceed 3 pounds per 1000 gallons (0.36 g/L) of wine or juice.	FDA advisory opinion dated August 29, 2016.

[1] To stabilize—To prevent or to retard unwanted alteration of chemical and/or physical properties.
[2] Parts per million—1 ppm = 0.128 ounces per 1000 gallons = 1 mg/L = 1000 ppb.
[3] Official Methods of Analysis of AOAC INTERNATIONAL, Volumes I & II, AOAC INTERNATIONAL, 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877–2417.
[4] Parts per billion—1ppb = 0.000128 ounces per 1000 gallons = 1 mg/1000L.

* * * * *

■ 8. Section 24.247 is amended by:

■ a. Revising the introductory text;

■ b. Revising the entry in the table for ''Ammonium phosphate (*mono*- and *di* basic''; and

■ c. Removing the footnote at the end of the table.

The revisions read as follows:

§ 24.247 Materials authorized for the treatment of distilling material.

The materials listed in this section as well as the materials listed in § 24.246 are approved as being acceptable in good commercial practice for use by proprietors in the treatment of distilling material within the limitations specified in this section. If, however, the U.S. Food and Drug Administration (FDA) informs TTB that a specified use or limitation of any material listed in this section is inconsistent with the food additive requirements under the Federal Food, Drug, and Cosmetic Act, the appropriate TTB officer may cancel or amend the approval for use of the material in the treatment of distilling material.

Materials	Use	Reference or limitation
Ammonium phosphate/diammonium phosphate (*mono*-and *di* basic).	Yeast nutrient in distilling material	The amount used shall not exceed 10 pounds per 1000 gallons (1.2 g/L). 21 CFR 184.1141a and 184.1141b.
* *	* * *	* *

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■ 9. Section 24.248 is amended by:

■ a. Revising the introductory text;

■ b. Removing the entries for ''Nanofiltration,'' ''Reverse osmosis,'' and ''Ultrafiltration'';

■ c. Adding an entry for ''Cross flow filtration'', including subentries for ''Nanofiltration'', ''Reverse osmosis'', and ''Ultrafiltration'', at the top of the table;

■ d. Revising the entries for ''Osmotic transport'', ''Spinning cone column'', and ''Thin-film evaporation under reduced pressure''; and

■ e. Removing footnote 1 at the end of the table and adding new footnotes 1 and 2.

The additions and revisions to the table and its footnotes read as follows:

§ 24.248 Processes authorized for the treatment of wine, juice, and distilling material.

The processes listed in this section are approved as being consistent with good commercial practice for use by proprietors in the production, cellar treatment, or finishing of wine, juice, and distilling material, within the general limitations of this section. If, however, the U.S. Food and Drug Administration (FDA) informs TTB that a specified use or limitation of any material listed in this section is inconsistent with the food additive requirements under the Federal Food, Drug, and Cosmetic Act, the appropriate TTB officer may cancel or amend the approval for use of the process in the production, cellar treatment, or finishing of wine, juice, and distilling material.

PROCESSES AUTHORIZED FOR THE TREATMENT OF WINE, JUICE, AND DISTILLING MATERIAL

Process	Use	Reference or limitation
Cross flow filtration	Various processes and uses. [1]	
Nanofiltration [2]	To reduce the level of volatile acidity in wine (used with ion exchange), to reduce the ethyl alcohol content of wine.	This process must use permeable membranes which are selective for molecules not greater than 150 molecular weight with transmembrane pressures of 250 psi or less.
Reverse osmosis [2]	To reduce the ethyl alcohol content of wine and to remove off flavors in wine.	Permeable membranes that are selective for molecules not greater than 500 molecular weight with transmembrane pressures of 200 pounds per square inch (psi) and greater. The addition of water other than that originally present prior to processing will render standard wine ''other than standard.'' Use must not alter the vinous character of the wine. May be used in combination with osmotic transport.
Ultrafiltration [2]	To remove proteinaceous material from wine; to reduce harsh tannic material from white wine produced from white skinned grapes; to remove pink color from blanc de noir wine; to separate red juice and wine into low color and high color fractions for blending purposes, to reduce the ethyl alcohol content of wine.	Permeable membranes that are selective for molecules greater than 500 and not less than 25,000 molecular weight with transmembrane pressures less than 200 psi. Shall not alter vinous character.
* *	* * *	* *
Osmotic transport [2]	For alcohol reduction	(1) Use must not alter the vinous character of the wine. (2) None of the stripping solution may migrate into the wine. (3) May be used in combination with reverse osmosis.

PROCESSES AUTHORIZED FOR THE TREATMENT OF WINE, JUICE, AND DISTILLING MATERIAL—Continued

Process	Use	Reference or limitation
* *	* * *	* *
Spinning cone column [2]	To reduce the ethyl alcohol content of wine and to remove off flavors in wine.	Use shall not alter vinous character. For standard wine, the same amount of essence must be added back to any lot of wine as was originally removed.
* *	* * *	* *
Thin film evaporation under reduced preasure [2].	To separate wine into a low alcohol wine fraction and into a higher alcohol distillate.	Use shall not alter vinous character. Water separated with alcohol during processing may be recovered by refluxing in a closed continuous system and returned to the wine. The addition of water other than that originally present in the wine prior to processing, will render standard wine other than standard wine.

[1] In cross-flow filtration, the wine is passed across the filter membrane (tangentially) at positive pressure relative to the permeate side. A proportion of the wine which is smaller than the membrane pore size passes through the membrane as permeate or filtrate; everything else is retained on the feed side of the membrane as retentate.

[2] When used to remove ethyl alcohol (dealcoholization), this process must be done on distilled spirits plant premises. However, reverse osmosis and nanofilitration, under certain limited conditions, may be used on bonded winery premises if ethyl alcohol is only temporarily created within a closed system.

* * * * *

■ 10. Paragraph (b) of § 24.250 is amended to read as follows:

§ 24.250 Application for use of new treating material or process.

(b) Documentary evidence from the U.S. Food and Drug Administration that the material is consistent with the food additive requirements under the Federal Food, Drug, and Cosmetic Act for its intended purpose in the amounts proposed for the particular treatment contemplated;

* * * * *

■ 11. Section 24.251 is added to read as follows:

§ 24.251 Salvaging accidentally diluted wine.

(a) *Removal of accidentally added water without prior TTB approval.* If a proprietor accidentally adds to standard wine water in excess of limitations specified in subparts F and L of this part, the accidentally diluted wine may be returned to its original condition through the use of reverse osmosis and distillation without prior application to TTB provided that:

(1) The accidentally added water represents no more than 10 percent of the original volume of the wine;

(2) The wine is returned to its original condition by removing an amount of water equal to the amount that was accidentally added to the wine;

(3) The vinous character of the wine is not altered;

(4) The proprietor transfers the wine in bond to a distilled spirits plant for treatment; and

(5) Records are maintained in accordance with paragraph (c) of this section.

(b) *Removal of accidentally added water with TTB approval.* If a proprietor accidentally adds water to standard wine and the accidentally added water represents more than 10 percent of the original volume of the wine, then the proprietor must request permission from TTB prior to treating the wine. A proprietor may submit an application requesting permission to treat the wine to remove the water and return the wine to its original condition. The removal of water may not be conducted until the appropriate TTB officer has approved the request. The application, which is to be submitted to the appropriate TTB officer, must be in writing, must provide evidence of the exact amount of water accidentally added to the wine and an explanation of how the water was accidentally added, and must specify the method the proprietor will use to remove the water from the wine. In approving any request under this section, the appropriate TTB officer may require the proprietor to take steps to prevent future accidental additions of water to wine. In evaluating any request under this section, the appropriate TTB officer may consider as a factor whether the proprietor has demonstrated good commercial practices, taking into account the proprietor's prior history of accidental addition of water to wine and of compliance with other regulations in part 24.

(c) *Records.* The proprietor must, with respect to removals of water from wine authorized under this section, maintain records that document the accidental addition of water, the use of any treatment or process to remove the water from the wine, and the fact that only the amount of water that was accidentally added to the wine was removed as a result of the treatment or process.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383–1384, as amended (26 U.S.C. 5382))

Signed: June 16, 2016.

John J. Manfreda,

Administrator.

Approved: October 25, 2016.

Timothy E. Skud,

Deputy Assistant Secretary. (Tax, Trade, and Tariff Policy).

[FR Doc. 2016–27581 Filed 11–21–16; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2016–0206; FRL–9954–83–Region 6]

Approval and Promulgation of Implementation Plans; Louisiana; Revisions to the New Source Review State Implementation Plan; Air Permit Procedure Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove severable portions of four revisions to the Louisiana New Source Review (NSR) State Implementation Plan (SIP) submitted by the Louisiana Department of Environmental Quality (LDEQ). Specifically, we are proposing to partially approve and partially

disapprove provisions contained within the Chapter 5 air construction permit rules as initially submitted on November 15, 1993, November 10, 1994, November 9, 2007, and November 3, 2014. The EPA is proposing this action under section 110 and parts C and D of the Clean Air Act (CAA).

DATES: Comments must be received on or before December 22, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2016–0206, at *http://www.regulations.gov* or via email to *kordzi.stephanie@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Stephanie Kordzi, 214–665–7520, *kordzi.stephanie@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Stephanie Kordzi, (214) 665–7520, *kordzi.stephanie@epa.gov* or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

The Act at Section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the SIP, preconstruction review programs applicable to new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Non-attainment NSR (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS), *i.e.,* ''attainment areas'', as well as areas where there is insufficient information to determine if the area meets the NAAQS, *i.e.,* ''unclassifiable areas.'' The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS, *i.e.,* ''nonattainment areas.'' The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source thresholds and thus do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located.

The EPA regulations governing the criteria that states must satisfy for the EPA approval of the NSR programs as part of the SIP are contained in 40 CFR Sections 51.160–51.166. In addition, there are several provisions in 40 CFR part 51 that apply generally to all SIP revisions.

As stated above, 40 CFR Section 51.160 establishes the enforceable procedures that all NSR programs must include. Sections 51.160–51.164 require that a SIP revision demonstrate that the adopted rules will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. Section 51.165 provides the minimum regulatory criteria for NNSR permitting programs and Section 51.166 provides the minimum regulatory criteria for approvable PSD permitting programs. Based upon our evaluation of the submittals, the EPA has concluded that three of the regulatory citations identified in this action do not meet the requirements of the CAA section 110(l). Below are summaries of the individual SIP submittals from the Secretary of the LDEQ.

A. The November 15, 1993, Louisiana SIP Submittal

On November 15, 1993, the LDEQ submitted revisions to the SIP. This SIP submittal incorporated revisions to the Louisiana Administrative Code (LAC) during the year 1993. It includes from Chapter 5, final revised regulation Sections 501, 502, 503, 504, 505, 507, 511, 513, 515, 517, 519, 521, 523, 525, 527, 529, 531, and 533. The EPA acted on most of the rule language contained in these sections in its August 4, 2016, final notice. *See* 81 FR 51341 (August 4, 2016). The EPA is proposing action at this time on the portions of the November 15, 1993 submittal that were not included in our August 4, 2016 final action. This action is on those portions that were not included in that notice.

The EPA is proposing approval of LAC 33:III, Chapter 5, Sections 525.A., 525.A.1., 525.A.3., 525.B., 525.B.1., 525.B.2, 527.A., 527.A.1., 527.A.2., 527.A.3., 527.B., 527.BN.1., 527.B.2., 529.A., 529.A.1., 529.A.2, 531.B.2 and 531.B.3. The LDEQ withdrew LAC 33:III, Chapter 5, Sections 525.A.2., 525.B.2.c., 525.B.3., 525.B.4., 525.B.5., 525.B.6., 525.B.7., 525.B.8., 527.B.5., 529.B.1., 529.B.2., 529.B.3., 529.B.4., in its letter of July 14, 2016, due to the provisions applying only to Part 70 sources. The EPA is proposing disapproval of section 501.B.1.d. which adds ''upsets'' to the list of activities exempt from permitting requirements. The basis for our disapproval is that the rule references the definition of ''upset'' in LAC 33:III.507.J.1 which is not part of the SIP submittal; the definition of ''upset'' is part of Louisiana's Title V program rules and mirrors the definition of ''emergency condition'' found at 40 CFR 70.6(g)(1), a rule which the EPA has proposed for removal from its Part 70 rules. See 81 FR 38645 (June 4, 2016).

The EPA is also proposing disapproval of the provisions for public notice that are inconsistent with federal laws and found in sections 513.A.1. and 531.A.1.

B. November 10, 1994, Submittal

On November 10, 1994, the LDEQ submitted revisions to the SIP. This SIP submittal incorporated revisions to the LAC published in the Louisiana Register on November 20, 1994. It includes final revised regulations at LAC 33:III, Chapter 5, Sections 501, 507, 517, 521, 527, and 533. The EPA acted on most of the rule language contained in these sections in its final notice 81 FR 51341 (August 4, 2016). This action is on those portions that were not included in that notice. The EPA is proposing to take action on sections 527.A.2., 527.A.2.c., 527.B., 527.B.1., 527.B.2.a., and 527.B.2.b. The EPA returned sections 507 and 533 rules due to their association with part 70 sources requirements to LDEQ on August 4, 2015.

C. The November 9, 2007, Louisiana SIP Submittal

On November 9, 2007, the LDEQ submitted the 2006 General Revisions to the Louisiana SIP. This SIP submittal incorporated revisions to the LAC during the year 2006 and revisions to the LAC not previously federally approved. It includes from Chapter 5, final revised regulation sections 501, 504, 509, 513, and 531. The EPA acted on most of the rule language contained in these sections in its final notice 80 FR 68451 (November 5, 2015) and final notice 81 FR 51341 (August 4, 2016). This action is on those portions that were not included in those notices. The EPA proposes approval for section 531.B.3. This action proposes for disapproval the provisions for public notice that are inconsistent with federal laws and found in sections 513.A.1.

D. The November 3, 2014, Louisiana SIP Submittal

On November 3, 2014, the LDEQ submitted the 2011–2013 Permit Rule revisions to the SIP. This SIP submittal incorporated revisions to the LAC during the years 2011–2012. It includes from Chapter 5, final revised regulation sections 501, 502, 503, 504, 523, and 537. The EPA acted on most of the rule language contained in these sections in its final notice 81 FR 51341 (August 4, 2016). This action is on that portion that was not included in that notice. This action proposes disapproval of the provisions regarding section 501.B.1.d. which adds ''upsets'' to the list of activities exempt from permitting requirements. The basis for our disapproval is that the rule references the definition of ''upset'' in LAC 33:III.507.J.1 which is not part of the SIP submittal; the definition of ''upset'' is part of Louisiana's Title V program rules and mirrors the definition of ''emergency condition'' found at 40 CFR 70.6(g)(1), a rule which the EPA has proposed for removal from its Part 70 rules. See 81 FR 38645 (June 4, 2016).

II. The EPA's Evaluation

We evaluated the SIP submissions of the specific citations of the Louisiana Air Permit Procedure Revisions identified above and revised in the November 15, 1993, November 10, 1994, November 9, 2007, and November 3, 2014, submissions.

A. Revisions to the NSR Air Permit Procedures

We evaluated the SIP submissions and are proposing approval of the Louisiana Permit Procedures Revisions, as identified, beginning with the November 15, 1993, through the November 3, 2014, submissions.

Prior to this action, the EPA proposed full approval of the major PSD and NNSR and minor NSR permitting program update. Those actions were finalized on November 5, 2015 (80 FR 68451) and August 4, 2016 (81 FR 51341).

Our evaluation of the proposed NSR revisions found, with the exception of the items proposed for disapproval and discussed below, the proposed revisions address requirements that enhance the SIP. These changes proposed for approval, in general: (1) Clarify the rules; (2) make the rules more consistent with Federal rules; (3) establish permit modification procedures; (4) establish reopening procedures: and (5) establish notification procedures of PSD permit actions to states outside of Louisiana.

• *Proposed Disapproval:* The EPA is proposing disapproval of the SIP revisions to section 501.B.1.d. submitted by the State of Louisiana on November 15, 1993, and updated on November 3, 2014. More specifically, Louisiana submitted a revision to LAC 33:III.501.B.1 that revises the list of specific activities that are exempt from the requirement to obtain a permit to add: ''*d. any upset, as defined in LAC 33:III.507.J.1; however, the permitting authority shall be advised of such occurrences without delay, in accordance with all applicable upset or emergency provisions of Louisiana Air Quality regulations and of LAC 33.I. Chapter 39; . . .*'' EPA's interpretation of the CAA requirements for SIPs, including minor NSR permitting programs, is that upsets are generally not the kind of activities that are amenable to NSR permitting due to their nature of being unforeseeable, unpredictable, beyond the control of the owner or operator of the source. However, the reference to the definition of ''upset'' in LAC 33:III.507.J.1 is problematic because that definition is not in the Louisiana SIP or currently before EPA for review, rather it is part of Louisiana's Title V regulations that are inconsistent with EPA's proposed rulemaking found in 81 FR 38645 (June 4, 2016), to amend its Title V regulations to remove the ''emergency provision'' found in 40 CFR 70.6(g) and 71.6(g). The ''emergency provision'' definition in 40 CFR 70.6(g)(1) mirrors LDEQ's definition of ''upset'' found in LAC 33:III.507.J.1, which is referenced in section 501.B.1.d. If finalized, that rulemaking would require LDEQ to also remove the affirmative defense language from its Title V rules, including the language at LAC 33:III.507.J which is part of Louisiana's approved Title V program.

• *Proposed Approval:* The EPA is proposing approval of sections 525.A.1. and 525.A.3. rules for incorporating minor modification procedures consistent with federal law. Section 525.A.1. pertains to the minor NSR permit program only.

• *Proposed Approval:* The EPA is proposing approval of sections 527.A., 527.A.1., 527.A.2., 527.A.2.a., 527.A.2.b., 527.A.2.c., 527.B., 527 B.1., B.2., B.3., and B.4., rules that incorporate significant modification procedures consistent with federal law.

• *Proposed Approval:* The EPA is proposing approval of sections 529.A., 529.A.1., 529.A.1.a., 529.A.1.b., and 529.A.2. for permit reopening for cause procedures consistent with federal law.

• *Proposed Approval:* The EPA is proposing approval of sections 531.B.2. and 531.B.3. for state permit notification procedures consistent with federal law.

• *Proposed Disapproval:* The EPA is proposing disapproval of Section 513A.1. based on this rule language referencing and relying on the discretionary public notice rule found in section 531.A.1 which is being proposed for partial disapproval. However, as stated above, the currently approved SIP contains adequate public notice provisions for minor NSR sources.

• *Proposed Disapproval:* The EPA is proposing disapproval of section 531.A. based on the information in its March 3, 2003, letter to LDEQ, which is included in the docket. The EPA notified the LDEQ that 40 CFR 51.161(a) requires opportunity for public comment and applies to all proposed decisions concerning new and modified sources. As currently written, Louisiana's revised rule section 531.A. submitted on November 15, 1993, states: ''*531.A. Public Notice 1. At the discretion of the permitting authority, public notice may be provided prior to issuance of any new or revised permit under this Chapter.*'' This discretionary language does not conform to the Federal requirements at Section 51.161. Section 51.161(a) provides: ''The legally enforceable procedures in § 51.160 *must* also require the State or local agency to provide opportunity for public comment on information submitted by owners and operators. The public information *must* include the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval.'' (*Emphasis added.*) Section 51.161(a), clearly mandates that legally enforceable procedures require the State or local agency to provide

opportunity for public comment. Thus the current language in 531.A. is not approvable under 40 CFR 51.161 as it allows the permitting agency discretion whether to provide for public notice.

B. Does the proposed approval of the Louisiana Minor and Nonattainment NSR Air Permit Procedure Revisions interfere with attainment, reasonable further progress, or any other applicable requirement of the Act?

We have determined that the regulations submitted to the EPA and being proposed for approval as SIP revisions meet the requirements of CAA section 110(l). The EPA's conclusion is based upon a line-by-line comparison of the proposed revisions with the federal requirements. The goal is to demonstrate that the proposed revisions will not interfere with the attainment of the NAAQS, Rate of Progress, RFP or any other applicable requirement of the CAA. Most of the changes were not substantial. Our analysis shows that in most cases, the state regulatory language is consistent with and in support of the intent of the federal rules and definitions. The EPA is therefore proposing to approve these submittals.

III. Proposed Action

We are proposing to partially approve and partially disapprove the Louisiana SIP revisions submitted by the State of Louisiana in accordance with the EPA regulations at 40 CFR 51.160–51.164 and under Section 110 and part C of the Act, and for the reasons presented above and included in our accompanying TSD. Table 1 below summarizes the changes that are in the SIP revision submittals. The accompanying Technical Support Document (TSD) includes a detailed evaluation of the submittals and our rationale. The TSD may be accessed online at *www.regulations.gov,* Docket No. EPA–R06–OAR–2016–0206.

TABLE 1—SUMMARY OF EACH NSR SIP SUBMITTAL AFFECTED BY THIS ACTION PROPOSED APPROVAL

Section	Date submitted to EPA as SIP amendment	Affected regulation
Section 525—Minor Modifications		
Section 525.A	11/15/1993	Sections 525.A., 525.A.1., 525.A.3.
Section 525.B	11/15/1993	Sections 525.B., 525.B.1. and 525.B.2.
Section 527—Significant Modifications		
Section 527.A	11/15/1993	Sections 527.A., 527.A.1., 527.A.2., and 527.A.3.
	11/10/1994	Sections 527.A.2., 527.A.2.c.
Section 527.B	11/15/1993	Sections 527.B., 527.B.1., 527.B.2.a., and 527.B.2.b.
	11/10/1994	Section 527.B.
Section 529—Reopenings for Cause		
Section 529.A	11/15/1993	Sections 529.A., 529.A.1. and 529A.2.
Section 529.B	11/15/1993	Sections 529.B., 529.B.1., 529.B.2., 529.B.3., and 529.B.4.
Section 531—Public Notice and Affected State Notice		
Section 531.B	11/15/1993	Section 531.B.2. and 531.B.3.
	11/9/2007	Section 531.B.3.

TABLE 2—SUMMARY OF EACH NSR SIP SUBMITTAL AFFECTED BY THIS ACTION PROPOSED DISAPPROVAL

Section	Date submitted to EPA as SIP amendment	Affected regulation
Section 501—Scope and Applicability		
Section 501.B	11/15/1993	Section 501.B.1.d.
	11/3/2014	Section 501.B.1.d.
Section 513—General Permits, Temporary Sources, and Relocation of Portable Facilities		
Section 513.A	11/15/1993	Section 513.A.1.
	11/9/2007	Section 513.A.1.
Section 531—Public Notice and Affected State Notice		
Section 531.A	11/15/1993	Section 531.A.1.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Louisiana regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because the portion of the rules that are proposed for approval do not contain any information collection activities and incorporate notification requirements to government entities consistent with federal law, significant and minor permit modification criteria, and permit reopening criteria. Further, this action proposes to disapprove specific submitted revisions regarding discretionary public notice and upset that are not consistent with federal laws for the regulation and permitting of air emission sources.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action proposes to approve regulatory citations that incorporate notification requirements to government entities consistent with federal law, significant and minor permit modification criteria, and permit reopening criteria. This action proposes to disapprove revisions regarding discretionary public notice and an exemption of upsets from permitting requirements that are no longer consistent with federal law for the regulation and permitting of air emission sources. Therefore it will have no impact on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action proposes to approve specific citations that incorporate notification requirements to government entities consistent with federal law, significant and minor permit modification criteria, and permit reopening criteria. This action proposes to disapprove submitted revisions regarding discretionary public notice and upset exemptions that are no longer consistent with federal law for the regulation and permitting of air emission sources. It therefore will have no impact on small governments.

E. Executive Order 13132, Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action proposes to approve specific citations that incorporate notification requirements to government entities consistent with federal law, significant and minor permit modification criteria, and permit reopening criteria. This action proposes to disapprove submitted revisions regarding discretionary public notice and upset exemptions that are no longer consistent with federal law for the regulation and permitting of air emission sources. There are no requirements or responsibilities added or removed from Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it proposes to approve specific citations that incorporate notification requirements to government entities consistent with federal law, significant and minor permit modification criteria, and permit reopening criteria. This action proposes to disapprove submitted revisions regarding discretionary public notice and upset exemptions that are no longer consistent with federal law for the regulation and permitting of air emission sources.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action is not subject to Executive Order 12898 because it proposes to approve specific citations that incorporate notification requirements to government entities consistent with federal law, significant and minor permit modification criteria, and permit reopening criteria. This action proposes to disapprove submitted revisions regarding discretionary public notice and upset exemptions that are no longer consistent with federal law for the regulation and permitting of air emission sources.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 16, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–28003 Filed 11–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2016–0544; FRL–9955–36–OAR]

Notice of Opportunity to Comment on Proposed Denial of Petitions for Rulemaking To Change the RFS Point of Obligation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petitions for rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to deny several petitions requesting that EPA initiate a rulemaking process to reconsider or change its regulations that identify refiners and importers of gasoline and diesel fuel as the entities responsible for complying with the annual percentage standards adopted under the Renewable Fuel Standard (RFS) program. EPA is providing an opportunity for the public to comment on the petitions we have received and on our proposed denial of the requests to initiate rulemaking.

DATES: Written comments must be received on or before January 23, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0544, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4131; email address: *macallister.julia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

(A) What should I consider as I prepare my comments for EPA?

Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On March 26, 2010, the EPA issued a final rule (75 FR 14670) establishing regulatory amendments to the renewable fuel standards (''RFS'') program regulations to reflect statutory amendments to Section 211(o) of the Clean Air Act enacted as part of the Energy Independence and Security Act of 2007. These amended regulations included 40 CFR 80.1406, imposing the obligation for compliance with the RFS annual standards on refiners and importers of gasoline and diesel fuel. These entities are referred to in the RFS regulations as ''obligated parties.'' Beginning in 2014, and continuing to the present, obligated parties and other stakeholders have questioned whether 40 CFR 80.1406 should be amended, and a number of them have filed formal petitions for reconsideration or revision of the definition of ''obligated party'' in 40 CFR 80.1406, or petitions for rulemaking to amend the provision. On January 27, 2014, Monroe Energy LCC (''Monroe'') filed a ''petition to revise'' 40 CFR 80.1406 to change the RFS point of obligation, and on January 28, 2016, Monroe filed a ''petition for reconsideration'' of the regulation. On February 11, 2016, Alon Refining Krotz Springs, Inc.; American Refining Group, Inc.; Calumet Specialty Products Partners, L.P.; Lion Oil Company; Ergon-West Virginia, Inc.; Hunt Refining Company; Placid Refining Company LLC; U.S. Oil & Refining Company (the ''Small Refinery Owners Ad Hoc Coalition'') filed a petition for reconsideration of 40 CFR 80.1406. On February 12, 2016, Valero Energy Corporation and its subsidiaries (''Valero'') filed a ''petition to reconsider and revise'' the rule. On June 13, 2016, Valero submitted a petition for rulemaking to change the definition of ''obligated party.'' On August 4, 2016, the American Fuel and Petrochemical Manufacturers (''AFPM'') filed a petition for rulemaking to change the definition of ''obligated party.'' On September 2, 2016, Holly Frontier also filed a petition for rulemaking to change the definition of ''obligated party.'' The petitions, comments received to date on the petitions, and EPA's draft analysis are available in a public docket that EPA has established for this Notice under Docket ID No. EPA–HQ–OAR–2016–0544.

III. What information is EPA particularly interested in?

The petitioners all seek to have the point of obligation shifted from refiners and importers, but differ somewhat in their suggestions for alternatives. Some request that EPA shift the point of obligation from refiners and importers to those parties that blend renewable fuel into transportation fuel. Others suggest that it be shifted to those parties that hold title to the gasoline or diesel fuel immediately prior to the sale of these fuels at the terminal (these parties

are commonly called the position holders), or to ''blenders and distributors.'' All petitioners argue, among other things, that shifting the point of obligation to parties downstream of refiners and importers in the fuel distribution system would align compliance responsibilities with the parties best positioned to make decisions on how much renewable fuel is blended into the transportation fuel supply in the United States. Some of the petitioners further claim that changing the point of obligation would result in an increase in the production, distribution, and use of renewable fuels in the United States and would reduce the cost of transportation fuel to consumers.

In the draft analysis available in the docket referenced above (Docket ID No. EPA–HQ–OAR–2016–0544), we present our rationale for proposing to deny the requests to initiate a rulemaking on the issue. In evaluating this matter, EPA's primary consideration is whether or not a change in the point of obligation would improve the effectiveness of the program to achieve Congress's goals. At the same time, EPA believes that a change in the point of obligation would be a substantial disruption that has the potential to undermine the success of the RFS program, as a result of increasing instability and uncertainty in programmatic obligations. We believe that the proponents of such a change bear the burden of demonstrating that the benefits are sufficiently large and likely that the disruption associated with such a transition would be worthwhile.

We believe that the current structure of the RFS program is working to incentivize the production, distribution, and use of renewable transportation fuels in the United States, while providing obligated parties a number of options for acquiring the RINs they need to comply with the RFS standards. We do not believe that petitioners have demonstrated that changing the point of obligation would likely result in increased use of renewable fuels. Changing the point of obligation would not address challenges associated with commercializing cellulosic biofuel technologies and the marketplace dynamics that inhibit the greater use of fuels containing higher levels of ethanol, two of the primary issues that inhibit the rate of growth in the supply of renewable fuels today. Changing the point of obligation could also disrupt investments reasonably made by participants in the fuels industry in reliance on the regulatory structure the agency established in 2007 and reaffirmed in 2010. While we do not anticipate a benefit from changing the point of obligation, we do believe that such a change would significantly increase the complexity of the RFS program, which could negatively impact its effectiveness. In the short term we believe that initiating a rulemaking to change the point of obligation could work to counter the program's goals by causing significant confusion and uncertainty in the fuels marketplace. Such a dynamic would likely cause delays to the investments necessary to expand the supply of renewable fuels in the United States, particularly investments in cellulosic biofuels, the category of renewable fuels that Congress envisioned would provide the majority of volume increases in future years.

In addition, changing the point of obligation could cause restructuring of the fuels marketplace as newly obligated parties alter their business practices to purchase fuel under contract ''below the rack'' instead of ''above the rack'' to avoid the compliance costs associated with being an obligated party under the RFS program. We believe these changes would have no beneficial impact on the RFS program or renewable fuel volumes and would decrease competition among parties that buy and sell transportation fuels at the rack, potentially increasing fuel prices for consumers and profit margins for refiners, especially those not involved in fuel marketing. EPA is also not persuaded, based on our analysis of available data, including that supplied by petitioners, by their arguments that they are disadvantaged compared to integrated refiners in terms of their costs of compliance, nor that other stakeholders such as unobligated blenders are receiving windfall profits.

EPA specifically requests comments that address whether or not changing the point of obligation in the RFS program would be likely to significantly increase the production, distribution, and use of renewable fuels as transportation fuel in the United States, as well as any data that can substantiate such claims. We also seek comment on any of the issues discussed here and in the more complete draft analysis of the petitions available in the docket referenced above, including EPA's authority to place the point of obligation on distributors and position holders; the significance of limiting the number and nature of obligated parties; the number of parties that are currently blenders or position holders; the extent to which blenders and position holders may be small businesses for whom designation as an obligated party would be particularly burdensome; whether it is likely that current renewable fuel blenders and/or position holders would reposition themselves in the market to avoid RFS obligations if designated as obligated parties and the likely impact of such repositioning; the significance of transitional issues and potential regulatory uncertainty that would result from changing the point of obligation; and the extent to which a change in the point of obligation could lead to unintended market changes or consequences.

Dated: November 10, 2016.

Janet McCabe,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2016–27854 Filed 11–21–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 438

[CMS–2402–P]

RIN 0938–AT10

Medicaid Program; The Use of New or Increased Pass-Through Payments in Medicaid Managed Care Delivery Systems

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule addresses changes, consistent with the CMCS Informational Bulletin (CIB) concerning ''The Use of New or Increased Pass-Through Payments in Medicaid Managed Care Delivery Systems,'' published on July 29, 2016, to the pass-through payment transition periods and the maximum amount of pass-through payments permitted annually during the transition periods under Medicaid managed care contract(s) and rate certification(s). The changes prevent increases in pass-through payments and the addition of new pass-through payments beyond those in place when the pass-through payment transition periods were established in the final Medicaid managed care regulations.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. December 22, 2016.

ADDRESSES: In commenting please refer to file code CMS–2402–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2402–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2402–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: John Giles, (410) 786–1255.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

In the June 1, 2015 **Federal Register** (80 FR 31098), we published the ''Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, Medicaid and CHIP Comprehensive Quality Strategies, and Revisions Related to Third Party Liability'' proposed rule (''June 1, 2015 proposed rule''). As part of the actuarial soundness proposals, we proposed to define actuarially sound capitation rates as those sufficient to provide for all reasonable, appropriate, and attainable costs that are required under the terms of the contract, including furnishing of covered services and operation of the managed care plan for the duration of the contract. Among the proposals was a general rule that the state may not direct the MCO's, PIHP's, or PAHP's expenditures under the contract.

In the May 6, 2016 **Federal Register** (81 FR 27498), we published the ''Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability'' final rule (''May 6, 2016 final rule''), which finalized the June 1, 2015 proposed rule. In the final rule, we finalized, with some revisions, the proposal which limited state direction of payments, including pass-through payments as defined below.

A. Summary of the Medicaid Managed Care May 6, 2016 Final Rule

We finalized a policy to limit state direction of payments, including pass-through payments at § 438.6(d) in the May 6, 2016 final rule (81 FR 27587 through 27592). Specifically, under the final rule (81 FR 27588), we defined pass-through payments at § 438.6(a) as any amount required by the state to be added to the contracted payment rates, and considered in calculating the actuarially sound capitation rate, between the MCO, PIHP, or PAHP and hospitals, physicians, or nursing facilities that is not for the following purposes: A specific service or benefit provided to a specific enrollee covered under the contract; a provider payment methodology permitted under § 438.6(c)(1)(i) through (iii) for services and enrollees covered under the contract; a subcapitated payment arrangement for a specific set of services and enrollees covered under the contract; GME payments; or FQHC or RHC wrap around payments. We noted that section 1903(m)(2)(A) of the Social Security Act (the Act) requires that capitation payments to managed care plans be actuarially sound; we interpret this requirement to mean that payments under the managed care contract must align with the provision of services to beneficiaries covered under the contract. We provided that these pass-through payments are not consistent with our standards for actuarially sound rates because they do not tie provider payments with the provision of services. The final rule contains a detailed description of the policy rationale (81 FR 27587 through 27592).

In an effort to provide a smooth transition for network providers, to support access for the beneficiaries they serve, and to provide states and managed care plans with adequate time to design and implement payment systems that link provider reimbursement with services covered under the contract or associated quality outcomes, we finalized transition periods related to pass-through payments for specified provider types to which states make most pass-through payments under Medicaid managed care programs: Hospitals, physicians, and nursing homes (81 FR 27590 through 27592). As finalized, § 438.6(d)(2) and (3) provide a 10-year transition period for hospitals, subject to limitations on the amount of pass-through payments. For MCO, PIHP, or PAHP contracts beginning on or after July 1, 2027, states will not be permitted to require pass-through payments for hospitals. The final rule also provides a 5-year transition period for pass-through payments to physicians and nursing facilities. For MCO, PIHP, or PAHP contracts beginning on or after July 1,

2022, states will not be permitted to require pass-through payments for physicians or nursing facilities. These transition periods provide states, network providers, and managed care plans significant time and flexibility to integrate current pass-through payment arrangements into allowable payment structures under actuarially sound capitation rates, including enhanced fee schedules or the other approaches consistent with § 438.6(c)(1)(i) through (iii).

As finalized, § 438.6(d) limits the amount of pass-through payments to hospitals as a percentage of the ''base amount,'' which is defined in paragraph (a) and calculated pursuant to rules in paragraph (d)(2). Section 438.6(d)(3) specifies a schedule for the phased reduction of the base amount, limiting the amount of pass-through payments to hospitals. For contracts beginning on or after July 1, 2017, the state may require pass-through payments to hospitals under the contract up to 100 percent of the base amount, as defined in the final rule. For subsequent contract years (contracts beginning on or after July 1, 2018 through contracts beginning on or after July 1, 2026), the portion of the base amount available for pass-through payments decreases by 10 percentage points per year. For contracts beginning on or after July 1, 2027, no pass-through payments to hospitals are permitted. The May 6, 2016 final rule noted that nothing would prohibit a state from eliminating pass-through payments to hospitals before contracts beginning on or after July 1, 2027. However, the final rule provided for a phased reduction in the percentage of the base amount that can be used for pass-through payments, because a phased transition would support the development of stronger payment approaches while mitigating any disruption to states and providers.

We believe that states will be able to more easily transition existing pass-through payments to physicians and nursing facilities to payment structures linked to services covered under the contract. Consequently, the May 6, 2016 final rule, in § 438.6(d)(5), provided a shorter time period for eliminating pass-through payments to physicians and nursing facilities and did not require a prescribed limit or phase down for these payments; states have the option to eliminate these payments immediately or phase down these payments over the 5 year transition period if they prefer. As noted in the final rule, the distinction between hospitals and nursing facilities and physicians was also based on the comments from stakeholders during the public comment period (81 FR 27590).

B. Questions About the Final Rule

Since publication of the May 6, 2016 final rule, we have received inquiries about states' ability to integrate new or increased pass-through payments into Medicaid managed care contracts. As explained in the CMCS Informational Bulletin (CIB) published on July 29, 2016,[1] adding new or increased pass-through payments for hospitals, physicians, or nursing facilities complicates the required transition of these pass-through payments to permissible provider payment models.

The transition periods under the final rule provide states, network providers, and managed care plans significant time and flexibility to move existing pass-through payment arrangements (that is, those in effect when the final rule was published) into different, permissible payment structures under actuarially sound capitation rates, including enhanced fee schedules or the other approaches consistent with § 438.6(c)(1)(i) through (iii). We did not intend states to begin additional or new pass-through payments, or to increase existing pass-through payments, notwithstanding the adjustments to the base amount permitted in § 438.6(d)(2), after the final rule was published but before July 1, 2017; such actions are contrary to and undermine the policy goal of eliminating pass-through payments. We clarify that we would not permit a pass-through payment amount to exceed the lesser of the amounts calculated pursuant to paragraph (d)(3) of this proposed rule. For states to add new or to increase existing pass-through payments is inconsistent with longstanding CMS policy, the proposal made in the June 1, 2015 proposed rule, and the May 6, 2016 final rule, which reflects the general policy goal to effectively and efficiently transition away from pass-through payments.

Under the final rule, we provided a delayed compliance date for § 438.6(c) and (d); we will enforce compliance with § 438.6(c) and (d) no later than the rating period for Medicaid managed care contracts beginning on or after July 1, 2017. Our exercise of enforcement discretion in permitting delayed compliance was not intended to create new opportunities for states to add or increase existing pass-through payments before July 1, 2017. This delay was intended to address concerns articulated by commenters, among them states and providers, that an abrupt end to directed pass-through payments could cause damaging disruption to safety-net providers. As discussed in the final rule and this proposal, pass-through payments are inconsistent with our interpretation and implementation of the statutory requirement for actuarially sound capitation rates because pass-through payments do not tie provider payments to the provision of services under the contract (81 FR 27588). Further, such required payments reduce managed care plans' ability to control expenditures, effectively use value-based purchasing strategies, and implement provider-based quality initiatives. The May 6, 2016 final rule made clear our position on these payments and our intent that they be eliminated from Medicaid managed care delivery systems, except for the directed payment models permitted by § 438.6(c), or the payments excluded from the definition of a pass-through payment in § 438.6(a), such as FQHC wrap payments.

The transition periods provided under § 438.6(d) are for states to identify existing pass-through payments and begin either tying such payments directly to services and utilization covered under the contract or eliminating them completely in favor of other support mechanisms for providers that comply with the requirements in § 438.6(c). The transition periods for current pass-through payments minimize disruption to local health care systems and interruption of beneficiary access by permitting a gradual step down from current levels of pass-through payments: (1) At the schedule and subject to the limit announced in the May 6, 2016 final rule for hospitals under § 438.6(d)(3); and (2) at a schedule adopted by the state for physicians and nursing facilities under § 438.6(d)(5). By providing states, network providers, and managed care plans significant time and flexibility to integrate current pass-through payment arrangements into different payment structures (including enhanced fee schedules or the other approaches consistent with § 438.6(c)(1)(i) through (c)(1)(iii)) and into actuarially sound capitation rates, we intended to address comments that the June 1, 2015 proposed rule would be unnecessarily disruptive and endanger safety-net provider systems that states have developed for Medicaid.

Recent questions from states indicate the transition period and delayed enforcement date have caused some confusion regarding our intent for increased and new pass-through

[1] The Use of New or Increased Pass-Through Payments in Medicaid Managed Care Delivery Systems; available at: *https://www.medicaid.gov/federal-policy-guidance/downloads/cib072916.pdf.* CMCS also noted in this CIB that it intended to further address in future rulemaking the issue of adding new or increased pass-through payments to managed care contracts.

payments for contracts prior to July 1, 2017, because the final rule did not explicitly prohibit such additions or increases. While we assumed such a prohibition in the final rule, we believe that additional rulemaking is necessary to clarify this issue in light of these comments. Under this proposed rule, we are linking pass-through payments permitted during the transition period to the aggregate amounts of pass-through payments that were in place at the time the May 6, 2016 final rule became effective on July 5, 2016, which is consistent with the intent under the final rule to phase out pass-through payments under Medicaid managed care contracts.

II. Provisions of the Current Proposed Rule

For reasons discussed above, we propose to revise § 438.6(d) to better effectuate the intent of the May 6, 2016 final rule. First, we propose to limit the availability of the transition periods in § 438.6(d)(3) and (5) (that is, the ability to continue pass-through payments for hospitals, physicians, or nursing facilities) to states that can demonstrate that they had such pass-through payments in either: (A) Managed care contract(s) and rate certification(s) for the rating period that includes July 5, 2016, and that were submitted for our review and approval on or before July 5, 2016; or (B) if the managed care contract(s) and rate certification(s) for the rating period that includes July 5, 2016 had not been submitted to us on or before July 5, 2016, the managed care contract(s) and rate certification(s) for a rating period before July 5, 2016 that had been most recently submitted to us for review and approval as of July 5, 2016.

Second, we propose to prohibit retroactive adjustments or amendments, notwithstanding the adjustments to the base amount permitted in § 438.6(d)(2), to managed care contract(s) and rate certification(s) to add new pass-through payments or increase existing pass-through payments defined in § 438.6(a). In this proposed rule, we clarify that we would not permit a pass-through payment amount to exceed the lesser of the amounts calculated pursuant to paragraph (d)(3).

Third, we propose to establish a new maximum amount of permitted pass-through payments for each year of the transition period. For hospitals, a state would be limited (in the total amount of permissible pass-through payments) during each year of the transition period to the lesser of either: (A) The percentage of the base amount applicable to that contract year; or (B) the pass-through payment amount identified in proposed paragraph (d)(1)(i). Thus, the amount of pass-through payments identified by the state in order to satisfy proposed paragraph (d)(1)(i) would be compared to the amount representing the applicable percentage of the base amount that is calculated for each year of the transition period. For pass-through payments to physicians and nursing facilities, we also propose to limit the amount of pass-through payments during the transition period to the amount of pass-through payments to physicians and nursing facilities under the contract and rate certification identified in proposed paragraph (d)(1)(i). In making these comparisons to the pass-through payments under the managed care contract(s) in effect for the rating period covering July 5, 2016 as identified in proposed paragraph (d)(1)(i)(A), or the rating period before July 5, 2016 as identified in proposed paragraph (d)(1)(i)(B), we will look at total pass-through payment amounts for the specified provider types. Past aggregate amounts of hospital pass-through payments will be used in determining the maximum amount for hospital pass-through payments during the transition period; past aggregate amounts of physician pass-through payments will be used in determining the maximum amount for physician pass-through payments during the transition period; and past aggregate amounts of nursing facility pass-through payments will be used in determining the maximum amount for nursing facility pass-through payments during the transition period.

Under our proposed rule, the aggregate amounts of pass-through payments in each provider category would be used to set applicable limits for the provider type during the transition period, without regard to the specific provider(s) that receive a pass-through payment. For example, if the pass-through payments in the contract identified under paragraph (d)(1)(i) were to 5 specific hospitals, the aggregate amount of pass-through payments to those hospitals would be relevant in establishing the limit during the transition period, but different hospitals could be the recipients of pass-through payments during the transition. As an alternative, we also considered whether the state should be limited by amount and recipient during the transition period; in our example, this would mean that only those 5 hospitals that received pass-through payments could receive such payments during the transition period. However, we believe this narrower policy would be more limiting than originally intended under the May 6, 2016 final rule when the transition periods were finalized. We request comment on our proposed approach. To implement our proposal, we propose to amend the existing regulation text to revise paragraph (d)(1) (including new (d)(1)(i) and (ii)), revise paragraph (d)(3) (including new (d)(3)(i) and (ii)), and revise paragraph (d)(5) as described below.

We propose to revise paragraph (d)(1) to clarify that a state may continue to require an MCO, PIHP, or PAHP to make pass-through payments (as defined in § 438.6(a)) to network providers that are hospitals, physicians, or nursing facilities under the contract, provided the requirements of paragraph (d) are met. We are proposing to retain the regulation text that provides explicitly that states may not require MCOs, PIHPs, or PAHPs to make pass-through payments other than those permitted under paragraph (d).

Under proposed paragraph (d)(1)(i), a state would be able to use the transition period for pass-through payments to hospitals, physicians, or nursing facilities only if the state can demonstrate that it had pass-through payments for hospitals, physicians, or nursing facilities, respectively, in both the managed care contract(s) and rate certification(s) that meet the requirements in either proposed paragraph (d)(1)(i)(A) or (B). We recognize that states may have multiple managed care plans and therefore multiple contracts and rate certifications that are necessary to establish the existence and amount of pass-through payments. We propose in paragraph (d)(1)(i)(A) that the managed care contract(s) and rate certification(s) must be for the rating period that includes July 5, 2016 and have been submitted for our review and approval on or before July 5, 2016. If the state had not yet submitted MCO, PIHP, or PAHP contract(s) and rate certification(s) for the rating period that includes July 5, 2016, we propose in paragraph (d)(1)(i)(B) that the state must demonstrate that it required the MCO, PIHP, or PAHP to make pass-through payments for a rating period before July 5, 2016 in the managed care contract(s) and rate certification(s) that were most recently submitted for our review and approval as of July 5, 2016. We propose to use the date July 5, 2016 for the purpose of identifying the pass-through payments in managed care contract(s) and rate certification(s) that are eligible for the pass-through payment transition period because it is consistent with the intent of the May 6, 2016 final rule that the transition period be used by states

that had pass-through payments in their MCO, PIHP, or PAHP contracts when we finalized that rule. These are the states for which we were concerned, based on the comments to the June 1, 2015 proposed rule, that an abrupt end to pass-through payments could be disruptive to their health care delivery system and safety-net providers. We believe that limiting the use of the transition period to states that had pass-through payments in effect as of the effective date of the May 6, 2016 final rule provides for the achievement of the policy goal of eliminating these types of payments. We did not intend for the May 6, 2016 final rule to incentivize or encourage states to add new pass-through payments, as we believe that these payments are inconsistent with actuarially sound rates.

Under proposed paragraph (d)(1)(ii), we would not approve a retroactive adjustment or amendment, notwithstanding the adjustments to the base amount permitted in § 438.6(d)(2), to managed care contract(s) and rate certification(s) to add new pass-through payments or increase existing pass-through payments defined in § 438.6(a). We clarify that we would not permit a pass-through payment amount to exceed the lesser of the amounts calculated pursuant to paragraph (d)(3) of this proposed rule. We are proposing paragraph (d)(1)(ii) to prevent states from undermining our policy goal to limit the use of the transition period to states that had pass-through payments in effect as of the effective date of the May 6, 2016 final rule. This proposed change also supports the policy rationale under the May 6, 2016 final rule and the July 29, 2016 CMCS Informational Bulletin (CIB) by prohibiting new or increased pass-through payments in Medicaid managed care contract(s), notwithstanding the adjustments to the base amount described above. As stated in the final rule and CIB, we believe that pass-through payments are not consistent with the statutory requirements in section 1903(m) of the Act and regulations for actuarially sound capitation rates because pass-through payments do not tie provider payments with the provision of services. The proposed change also addresses our concern that new or increased pass-through payments substantially complicate the required transition of pass-through payments to permissible provider payment models, as such additions or increases by states will further delay the development of permissible, stronger payment approaches that are based on the utilization or delivery of services to enrollees covered under the contract, or the quality and outcomes of services.

As an alternative to proposed paragraphs (d)(1)(i) and (ii), we considered linking eligibility for the transition period to those states with pass-through payments for hospitals, physicians, or nursing facilities that were in approved (not just submitted for our review and approval) managed care contract(s) and rate certification(s) only for the rating period covering July 5, 2016. However, we believe that such an approach is not administratively feasible for states or CMS because it does not recognize the nuances of the timing and approval processes; we believe our proposed approach provides the appropriate parameters and conditions for pass-through payments in managed care contract(s) and rate certification(s) during the transition period. We request comment on our proposed approach.

In proposed paragraph (d)(3), we propose to amend the cap on the amount of pass-through payments to hospitals that may be incorporated into managed care contract(s) and rate certification(s) during the transition period for hospital payments, which will apply to rating periods for contract(s) beginning on or after July 1, 2017. Specifically, we propose to revise § 438.6(d)(3) to require that the limit on pass-through payments each year of the transition period be the lesser of: (A) The sum of the results of paragraphs (d)(2)(i) and (ii),[2] as modified under the schedule in this paragraph (d)(3); or (B) the total dollar amount of pass-through payments to hospitals identified by the state in the managed care contract(s) and rate certification(s) used to meet the requirement in paragraph (d)(1)(i). This proposed language would limit the amount of pass-through payments each contract year to the lesser of the calculation adopted in the May 6, 2016 final rule (the ''base amount''), as decreased each successive year under the schedule in this paragraph (d)(3), or the total dollar amount of pass-through payments to hospitals identified by the state in managed care contract(s) and rate certification(s) described in paragraph (d)(1)(i). For example, if a state had $10 million in pass-through payments to hospitals in the contract and rate certification used to meet the requirement in paragraph (d)(1)(i), that $10 million figure would be compared each year to the base amount as reduced on the schedule described in this paragraph (d)(3); the lower number would be used to limit the total amount of pass-through payments to hospitals allowed for that specific contract year.

This proposed language would prevent increases of aggregate pass-through payments for hospitals during the transition period beyond what was already in place when the pass-through payment limits and transition periods were finalized in the May 6, 2016 final rule. As an alternative to our proposal here, we considered stepping down both the base amount (as provided in paragraph (d)(3)) and the total dollar amount of pass-through payments to hospitals identified by the state in managed care contract(s) and rate certification(s) described in paragraph (d)(1)(i), as part of the lesser of calculation. The lower stepped-down amount would be used as the cap each year of the transition period. However, we believe such an approach would require a state to phase down their pass-through payments more quickly than originally intended under the May 6, 2016 final rule. Our proposal here is not intended to speed up the rate of a state's phase down of pass-through payments; rather, we are intending to prevent increases in pass-through payments and the addition of new pass-through payments beyond what was already in place when the pass-through payment limits and transition periods were finalized given that this was the final rule's intent. We request comment on our proposed approach.

In addition, we are proposing to amend paragraph (d)(3) to provide that states must meet the requirements in paragraph (d)(1)(i) to continue pass-through payments for hospitals during the transition period. We believe this additional text is necessary to be consistent with our intent, explained above, for the proposed revisions to paragraph (d)(1). As in the May 6, 2016 final rule, pass-through payments to hospitals must be phased out no longer than on the 10-year schedule, beginning with rating periods for contracts that start on or after July 1, 2017. We added the phrase ''rating periods'' to be consistent with our terminology in the final rule; we made this clarifying edit throughout proposed paragraphs (d)(3) and (d)(5). We request comment on our proposed amendments to paragraph (d)(3).

[2] The portion of the base amount calculated in § 438.6(d)(2)(i) is analogous to performing UPL calculations under a FFS delivery system, using payments from managed care plans for Medicaid managed care hospital services in place of the state's payments for FFS hospital services under the state plan. The portion of the base amount calculated in § 438.6(d)(2)(ii) takes into account hospital services and populations included in managed care during the rating period that includes pass-through payments which were in FFS two years prior.

Finally, we are proposing to revise § 438.6(d)(5) to be consistent with the proposed revisions in § 438.6(d)(1)(i) and to limit the total dollar amount of pass-through payments that is available each contract year for physicians and nursing facilities. We are not proposing to implement a phase-down for pass-through payments to physicians or nursing facilities. We propose that for states that meet the requirements in paragraph (d)(1)(i), rating periods for contracts beginning on or after July 1, 2017 through rating periods for contracts beginning on or after July 1, 2021, may continue to require pass-through payments to physicians or nursing facilities under the MCO, PIHP, or PAHP contract; such pass-through payments may be no more than the total dollar amount of pass-through payments for each category identified in the managed care contracts and rate certifications used to meet the requirement in paragraph (d)(1)(i). We added the phrase ''rating periods'' to be consistent with our terminology in the final rule; we made this clarifying edit throughout proposed paragraphs (d)(3) and (d)(5). This approach is consistent with the general goal of not increasing pass-through payments beyond what was included as of the effective date of the final rule when the pass-through payment limits and transition periods were finalized and creating a consistent standard in alignment with the proposed changes in § 438.6(d)(3) to limit increasing pass-through payments made to hospitals, physicians, and nursing facilities under Medicaid managed care contracts. We request comment on our proposal as a whole and the specific proposed regulation text.

III. Collection of Information Requirements

This rule would not impose any new or revised information collection, reporting, recordkeeping, or third-party disclosure requirements or burden. Our proposed revision of § 438.6(d) would not impose any new or revised IT system requirements or burden because the existing regulation at § 438.7 requires the rate certification to document special contract provisions under § 438.6. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Impact Analysis

A. Statement of Need

As discussed throughout this proposed rule, we have significant concerns that pass-through payments have negative consequences for the delivery of services in the Medicaid program. The existence of pass-through payments may affect the amount that a managed care plan is willing or able to pay for the delivery of services through its base rates or fee schedule. In addition, pass-through payments make it more difficult to implement quality initiatives or to direct beneficiaries' utilization of services to higher quality providers because a portion of the capitation rate under the contract is independent of the services delivered and outside of the managed care plan's control. Put another way, when the fee schedule for services is set below the normal market, or negotiated rate, to account for pass-through payments, moving utilization to higher quality providers can be difficult because there may not be adequate funding available to incentivize the provider to accept the increased utilization. When pass-through payments guarantee a portion of a provider's payment and divorce the payment from service delivery, it is more challenging for managed care plans to negotiate provider contracts with incentives focused on outcomes and managing individuals' overall care.

We realize that some pass-through payments have served as a critical source of support for safety-net providers who provide care to Medicaid beneficiaries. Several commenters raised this issue in response to the June 1, 2015 proposed rule.[3] Therefore, in response to some commenters' request for a delayed implementation of the limitation on directed payments and to address concerns that an abrupt end to these payments could create significant disruptions for some safety-net providers who serve Medicaid managed care enrollees, we included in the May 6, 2016 final rule a delay in the compliance date and a transition period for existing pass-through payments to hospitals, physicians, and nursing facilities. These transition periods begin with the compliance date, and were designed and finalized to enable affected providers, states, and managed care plans to transition away from existing pass-through payments. Such payments could be transitioned into payments tied to covered services, value-based payment structures, or delivery system reform initiatives without undermining access for the beneficiaries; alternatively, states could step down such payments and devise other methods to support safety-net providers to come into compliance with § 438.6(c) and (d).

However, as noted previously, the transition period and delayed enforcement date caused some confusion regarding increased and new pass-through payments. The May 6, 2016 final rule created a strong incentive for states to move swiftly to put pass-through payments into place in order to take advantage of the pass-through payment transition periods established in the May 6, 2016 final rule. Contrary to our discussion in the May 6, 2016 final rule regarding the statutory requirements in section 1903(m) of the Act and regulations for actuarially sound capitation rates, some states expressed interest in developing new and increased pass-through payments for their respective Medicaid managed care programs as a result of the May 6, 2016 final rule. In response to this interest, we published the July 29, 2016 CMCS Informational Bulletin (CIB) to quickly address questions regarding the ability of states to increase or add new pass-through payments under Medicaid managed care plan contracts and capitation rates, and to describe our plan for monitoring the transition of pass-through payments to approaches for provider payment under Medicaid managed care programs that are based on the delivery of services, utilization, and the outcomes and quality of the delivered services.

We noted in the CIB that the transition from one payment structure to another requires robust provider and stakeholder engagement, agreement on approaches to care delivery and payment, establishing systems for measuring outcomes and quality, planning efforts to implement changes, and evaluating the potential impact of change on Medicaid financing mechanisms. Whether implementing value-based payment structures, implementing other delivery system reform initiatives, or eliminating pass-through payments, there will be transition issues for states coming into compliance; adequately working through transition issues, including ensuring adequate base rates, is central to both delivery system reform and to strengthening access, quality, and efficiency in the Medicaid program. We stressed that the purpose and intention of the transition periods is to acknowledge that pass-through payments existed prior to the final rule and to provide states, network providers, and managed care plans time and flexibility to integrate existing pass-through payment arrangements into permissible payment structures.

[3] Available at: *https://www.gpo.gov/fdsys/pkg/FR–2015-06-01/pdf/2015-12965.pdf.*

As we noted in the CIB and throughout this proposed rule, we believe that adding new or increased pass-through payments for hospitals, physicians, or nursing facilities, beyond what was included as of July 5, 2016, into Medicaid managed care contracts exacerbates a problematic practice that is inconsistent with our interpretation of statutory and regulatory requirements, complicates the required transition of these pass-through payments to stronger payment approaches that are based on the utilization or delivery of services to enrollees covered under the contract, or the quality and outcomes of such services, and reduces managed care plans' ability to effectively use value-based purchasing strategies and implement provider-based quality initiatives. In the CIB, we signaled the possible need, and our intent, to further address this policy in future rulemaking and link pass-through payments through the transition period to the amounts of pass-through payments in place at the time the Medicaid managed care rule was effective on July 5, 2016.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 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.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that this rule is ''economically significant'' as measured by the $100 million threshold, and hence a major rule under the Congressional Review Act.

The May 6, 2016 final rule included a RIA (81 FR 27830). During that analysis, we did not project a significant fiscal impact for § 438.6(d). When we reviewed and analyzed the May 6, 2016 final rule, we concluded that states would have other mechanisms to build in the amounts currently provided through pass-through payments in approvable ways, such as approaches consistent with § 438.6(c)(1)(i) through (iii). If a state was currently building in $10 million in pass-through payments to hospitals under their current managed care contracts, we assumed that the state would incorporate the $10 million into their managed care rates in permissible ways rather than spending less in Medicaid managed care. While it is possible that this would be more difficult for states with relatively larger amounts of pass-through payments, the long transition period provided under the May 6, 2016 final rule to phase out pass-through payments should help states to integrate existing pass-through payments into actuarially sound capitation rates through permissible Medicaid financing structures, including enhanced fee schedules or the other approaches consistent with § 438.6(c)(1)(i) through (iii).

A number of states have integrated some form of pass-through payments into their managed care contracts for hospitals, nursing facilities, and physicians. In general, the size and number of the pass-through payments for hospitals has been more significant than for nursing facilities and physicians. We noted in the final rule (81 FR 27589) a number of reasons provided by states for using pass-through payments in their managed care contracts. As of the effective date of the final rule, we estimate that at least eight states have implemented approximately $105 million in pass-through payments for physicians annually; we estimate that at least three states have implemented approximately $50 million in pass-through payments for nursing facilities annually; and we estimate that at least 16 states have implemented approximately $3.3 billion in pass-through payments for hospitals annually. These estimates are somewhat uncertain, as before the final rule, we did not have regulatory requirements for states to document and describe pass-through payments in their managed care contracts or rate certifications. The amount of pass-through payments often represents a significant portion of the overall capitation rate under a managed care contract. We have seen pass-through payments that have represented 25 percent, or more, of the overall managed care contract and 50 percent of individual rate cells. The rationale for these pass-through payments in the development of the capitation rates is often not transparent, and it is not clear what the relationship of these pass-through payments is to the provision of services or the requirement for actuarially sound rates.

Since the publication of the final rule, we received a formal proposal from one state regarding $250–275 million in pass-through payments to hospitals; we have been working with the state to identify permissible implementation options for their proposal, including under § 438.6(c), and tie such payments to the utilization and delivery of services (as well as the outcomes of delivered services). We heard informally that two additional states are working to develop pass-through payment mechanisms to increase total payments to hospitals by approximately $10 billion cumulatively. We also heard informally from one state regarding a $200 million proposal for pass-through payments to physicians. We also continue to receive inquiries from states, provider associations, and consultants who are developing formal proposals to add new pass-through payments, or increase existing pass-through payments, and incorporate such payments into Medicaid managed care rates. While it is difficult for us to conduct a detailed quantitative analysis given this considerable uncertainty and lack of data, we believe that without this proposed (and a subsequent final) rulemaking, states would continue to ramp-up pass-through payments in ways that are not consistent with the pass-through payment transition periods established in the final rule.

Since we cannot produce a detailed quantitative analysis, we have developed a qualitative discussion for this RIA. We believe there are many benefits with this regulation, including consistency with the statutory requirements in section 1903(m) of the

Act and regulations for actuarially sound capitation rates, improved transparency in rate development processes, stronger payment approaches that are based on the utilization or delivery of services to enrollees covered under the contract, or the quality and outcomes of such services, and improved support for delivery system reform that is focused on improved care and quality for Medicaid beneficiaries. We believe that the costs of this regulation to state and federal governments will not be significant; CMS currently reviews and works with states on managed care contracts and rates, and because pass-through payments exist today, any additional costs to state or federal governments should be negligible.

Relative to the current baseline, this rule is likely to prevent increases in or the development of new pass-through payments, which would reduce state and federal government transfers to hospitals, physicians, and nursing facilities. Because we lack sufficient information to forecast the eventual overall impact of the May 6, 2016 final rule on state pass-through payments, we provide only a qualitative discussion of the impact of this rule on avoided transfers. Given these avoided transfers, we believe this rule is economically significant as defined by Executive Order 12866.

C. Anticipated Effects

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Small entities are those entities, such as health care providers, having revenues between $7.5 million and $38.5 million in any 1 year. Individuals and states are not included in the definition of a small entity. We do not believe that this proposed rule would have a significant economic impact on a substantial number of small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds. We do not anticipate that the provisions in this proposed rule will have a substantial economic impact on small rural hospitals. We are not preparing analysis for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals in comparison to total revenues of these entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that is approximately $146 million. This proposed rule does not mandate any costs (beyond this threshold) resulting from (A) imposing enforceable duties on state, local, or tribal governments, or on the private sector, or (B) increasing the stringency of conditions in, or decreasing the funding of, state, local, or tribal governments under entitlement programs.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule that imposes substantial direct requirements or costs on state and local governments, preempts state law, or otherwise has federalism implications. Since this proposed rule does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable. In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

D. Alternatives Considered

During the development of this proposed rule, we assessed all regulatory alternatives and discussed in the preamble a few alternatives that we considered. First, in discussing our proposed revisions to paragraphs (d)(1)(i) and (ii) in this proposed rule, we considered linking eligibility for the transition period to those states with pass-through payments for hospitals, physicians, or nursing facilities that were in approved (not just submitted for CMS review and approval) managed care contract(s) and rate certification(s) only for the rating period covering July 5, 2016. However, we believe that such an approach is not administratively feasible for states or CMS because it does not recognize the nuances of the timing and approval processes; we believe our proposed approach provides the appropriate parameters and conditions for pass-through payments in managed care contract(s) and rate certification(s) during the transition period.

Second, in discussing our proposed revisions to paragraphs (d)(3) and (d)(5) in this proposed rule, we described that the aggregate amounts of pass-through payments in each provider category would be used to set applicable limits for the provider type during the transition period, without regard to the specific provider(s) that receive a pass-through payment. As an alternative, we considered whether the state should be limited by amount and recipient during the transition period; however, we believe this narrower policy would be more limiting than originally intended under the May 6, 2016 final rule when the pass-through payment transition periods were finalized.

E. Accounting Statement

As discussed in this RIA, the benefits, costs, and transfers of this regulation are identified in table 1 as qualitative impacts only.

TABLE 1—ACCOUNTING STATEMENT

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate	Period covered	
Benefits							
Non-Quantified	*Benefits include:* Consistency with the statutory requirements in section 1903(m) of the Act and regulations for actuarially sound capitation rates; improved transparency in rate development processes; stronger payment approaches that are based on the utilization or delivery of services to enrollees covered under the contract, or the quality and outcomes of such services; and improved support for delivery system reform that is focused on improved care and quality for Medicaid beneficiaries.						
Costs							
Non-Quantified	Costs to state or federal governments should be negligible.						
Transfers							
Non-Quantified	Relative to the current baseline, this rule is likely to prevent increases in or the development of new pass-through payments, which would reduce state and federal government transfers to hospitals, physicians, and nursing facilities. Given these avoided transfers, we believe this rule is economically significant as defined by Executive Order 12866.						

List of Subjects in 42 CFR Part 438

Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 438—MANAGED CARE

■ 1. The authority citation for part 438 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 438.6 is amended by revising paragraphs (d)(1), (3), and (5) to read as follows:

§ 438.6 Special contract provisions related to payment.

* * * * *

(d) * * * (1) *General rule.* States may continue to require MCOs, PIHPs, and PAHPs to make pass-through payments (as defined in paragraph (a) of this section) to network providers that are hospitals, physicians, or nursing facilities under the contract, provided the requirements of this paragraph (d) are met. States may not require MCOs, PIHPs, and PAHPs to make pass-through payments other than those permitted under this paragraph (d).

(i) In order to use a transition period described in this paragraph (d), a State must demonstrate that it had pass-through payments for hospitals, physicians, or nursing facilities in:

(A) Managed care contract(s) and rate certification(s) for the rating period that includes July 5, 2016, and were submitted for CMS review and approval on or before July 5, 2016; or

(B) If the managed care contract(s) and rate certification(s) for the rating period that includes July 5, 2016 had not been submitted to CMS on or before July 5, 2016, the managed care contract(s) and rate certification(s) for a rating period before July 5, 2016 that had been most recently submitted for CMS review and approval as of July 5, 2016.

(ii) CMS will not approve a retroactive adjustment or amendment, notwithstanding the adjustments to the base amount permitted in paragraph (d)(2) of this section, to managed care contract(s) and rate certification(s) to add new pass-through payments or increase existing pass-through payments defined in paragraph (a) of this section.

* * * * *

(3) *Schedule for the reduction of the base amount of pass-through payments for hospitals under the MCO, PIHP, or PAHP contract and maximum amount of permitted pass-through payments for each year of the transition period.* For States that meet the requirement in paragraph (d)(1)(i) of this section, pass-through payments for hospitals may continue to be required under the contract but must be phased out no longer than on the 10-year schedule, beginning with rating periods for contract(s) that start on or after July 1, 2017. For rating periods for contract(s) beginning on or after July 1, 2027, the State cannot require pass-through payments for hospitals under a MCO, PIHP, or PAHP contract. Until July 1, 2027, the total dollar amount of pass-through payments to hospitals may not exceed the lesser of:

(i) A percentage of the base amount, beginning with 100 percent for rating periods for contract(s) beginning on or after July 1, 2017, and decreasing by 10 percentage points each successive year; or

(ii) The total dollar amount of pass-through payments to hospitals identified in the managed care contract(s) and rate certification(s) used to meet the requirement of paragraph (d)(1)(i) of this section.

* * * * *

(5) *Pass-through payments to physicians or nursing facilities.* For States that meet the requirement in paragraph (d)(1)(i) of this section, rating periods for contract(s) beginning on or after July 1, 2017 through rating periods for contract(s) beginning on or after July 1, 2021, may continue to require pass-through payments to physicians or nursing facilities under the MCO, PIHP, or PAHP contract of no more than the total dollar amount of pass-through payments to physicians or nursing facilities, respectively, identified in the managed care contract(s) and rate certification(s) used to meet the requirement of paragraph (d)(1)(i) of this section. For rating periods for contract(s) beginning on or after July 1, 2022, the State cannot require pass-through payments for physicians or nursing facilities under a MCO, PIHP, or PAHP contract.

* * * * *

Dated: November 10, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: November 10, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–28024 Filed 11–18–16; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 2 and 8

[Docket No. USCG–2016–0880]

RIN 1625–AC35

Adding the Polar Ship Certificate to the List of SOLAS Certificates and Certificates Issued by Recognized Classification Societies

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would add a new Polar Ship Certificate to the list of existing certificates required to be carried on board all U.S. and foreign-flagged vessels subject to the International Convention for Safety of Life at Sea (SOLAS) and operating in Arctic and Antarctic waters, generally above 60 degrees north latitude and below 60 degrees south latitude lines. Additionally, the Coast Guard proposes to add this certificate to the list of SOLAS certificates that recognized classification societies are authorized to issue on behalf of the Coast Guard. The proposed rule would apply to commercial cargo ships greater than 500 gross tons engaging in international voyages, and passenger ships carrying more than 12 passengers engaging in international voyages, when these ships operate within polar waters as defined by the Polar Code.

DATES: Comments and related material must be submitted to the online docket via *http://www.regulations.gov* by December 22, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0880 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

Collection of Information: You must submit comments on the collection of information discussed in section V.D. of this preamble both to the Coast Guard's docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget. OIRA submissions can use one of the listed methods:

- *Email* (preferred)—*oira_submission@omb.eop.gov* (include the docket number and ''Attention: Desk Officer for Coast Guard, DHS'' in the subject line of the email);
- *Fax*—202–395–6566; or
- *Mail*—Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email CDR Todd Howard, Systems Engineering Division (CG–ENG–3), Coast Guard; telephone 202–372–1375, email *Todd.M.Howard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

We are not planning to hold a public meeting but may do so if public comments indicate a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of that meeting.

II. Abbreviations

BLS Bureau of Labor Statistics
COI Collection of Information
DHS Department of Homeland Security
FR Federal Register
IMO International Maritime Organization
MARPOL International Convention for the Prevention of Pollution from Ships, 1974
MEPC Marine Environment Protection Committee
MOA Memorandum of Agreement
MSC Maritime Safety Committee
NAICS North American Industry Classification System
OMB Office of Management and Budget
Polar Code International Code for Ships Operating in Polar Waters
RA Regulatory Assessment
SBA Small Business Administration
SOLAS International Convention for the Safety of Life at Sea
STCW International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers
§ Section Symbol
U.S.C. United States Code

III. Basis, Purpose, and Background

In 2014 and 2015, in resolutions MSC.384(94) and MEPC.264(68), respectively, the International Maritime Organization (IMO) adopted the safety and environmental provisions of the International Code for Ships Operating in Polar Waters (Polar Code). The Polar Code adds requirements to existing IMO Conventions—the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution from Ships (MARPOL), and the International

Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW)—in consideration of hazards and conditions unique to the polar waters, and an expected increase in traffic in Arctic and Antarctic waters. These additional hazards include navigation in ice and low temperatures, high latitude communications and navigation, remoteness from response resources, and limited hydrographic charting. The Polar Code enters into force on January 1, 2017.

One of the requirements for ships subject to the Polar Code is to carry a Polar Ship Certificate pursuant to SOLAS. The Polar Ship Certificate attests that the vessel has met applicable requirements of SOLAS to the satisfaction of the U.S. Government. As a signatory to SOLAS, the United States has a treaty obligation to ensure compliance with SOLAS requirements. This rulemaking creates a certificate that U.S. vessels subject to SOLAS will need in order to travel internationally within polar waters as defined by the Polar Code beginning January 1, 2017. Beginning on that date, U.S. vessels that are subject to the SOLAS Convention and elect to travel through the polar waters of States other than the United States will have to carry a Polar Ship Certificate or risk detention, denial of entry, or expulsion from the polar waters of other States. This rulemaking is necessary to allow the Coast Guard to create the new Polar Ship Certificate and add it to the list of certificates in 46 CFR part 2, and to allow third-party organizations to issue it on the Coast Guard's behalf by adding the new Polar Ship Certificate to the list of certificates in 46 CFR part 8. Foreign flagged vessels, subject to SOLAS and operating in polar waters, must also carry the Polar Ship Certificate but the certificate will be issued by the vessel's class society or flag state. However, the Coast Guard will examine foreign flagged vessels during Port State Control boardings to ensure that they are properly certificated. The SOLAS requirement applies to commercial cargo ships greater than 500 gross tons engaging in international voyages, and passenger ships carrying more than 12 passengers engaging in international voyages, when these ships operate within polar waters as defined by the Polar Code.

The Coast Guard is authorized to regulate this subject matter under, among other authorities, Executive Order 12234, ''Enforcement of the Convention for the Safety of Life at Sea,'' 45 FR 58801; 33 U.S.C. 1231; 46 U.S.C. 2103, 3306, 3316, and 3703; and Department of Homeland Security Delegation No. 0170.1.

This rulemaking does not address the Polar Code requirements added to SOLAS other than the Polar Code Certificate. Furthermore, this rulemaking does not address the Polar Code requirements added to MARPOL or STCW. In order to begin issuing Polar Code certificates as soon as possible after January 1, 2017, the Coast Guard is implementing the Polar Code through several rulemakings. The first project, which is this rulemaking, only requires SOLAS vessels operating in polar waters to carry a Polar Ship Certificate. It contains the regulatory changes required for the issuance of the certificates and reflects only the documentation costs for the certificates. Subsequent rulemakings will implement the design, engineering, and personnel standards found in the Polar Code. The incremental costs for industry to comply with these standards will be accounted for in the regulatory analyses for those rulemakings.

IV. Discussion of Proposed Rule

This proposed rule would amend 46 CFR 2.01–6(a)(1), and 2.01–25 (a)(1) and (a)(2), to include the Polar Ship Certificate in the list of International Convention Certificates to be issued by the Officer in Charge of Marine Inspection and carried on certain passenger, cargo, and tankships engaged in international voyages. This proposed requirement would apply to commercial cargo ships greater than 500 gross tons and passenger ships carrying more than 12 passengers that engage in international voyages within polar waters as defined by the Polar Code.

This proposed rule would also amend 46 CFR 8.320(b) to include the Polar Ship Certificate in the list of International Convention Certificates that could be issued by recognized classification societies. Both the Coast Guard and classification societies would have the ability to issue these certificates.

By adding this certificate to the Code of Federal Regulations, we enable marine inspectors to ensure compliance with the SOLAS requirement to carry a Polar Ship Certificate, which fulfills the United States' treaty obligations with regard to the certification. Additionally, without this certificate, the U.S.-flagged vessels sailing on international routes would be subject to deficiencies, detentions, denial of entry or expulsion from the polar waters of other port States due to lack of proper certificates.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

This proposed rule would add a new Polar Ship Certificate to the list of existing SOLAS certificates required to be carried onboard all U.S. and foreign-flagged vessels above 500 GT ITC, (the International Convention on Tonnage Measurement of Ships 1969 or gross tonnage assigned under this system) or passenger ships carrying more than 12 passengers on international routes operating in polar waters, generally above 60 degrees north latitude and below 60 degrees south latitude lines. The IMO adopted the Polar Code in 2014 and 2015 to acknowledge that polar waters impose additional operating demands and risks.[1] Since the United States is signatory to the SOLAS convention, the United States has an obligation to ensure that all U.S.-flagged vessels subject to SOLAS that transit in polar waters carry a Polar Ship Certificate. Owners and operators of all foreign-flagged vessels subject to SOLAS would have their Polar Ship Certificates issued by the appropriate flag state.

This proposed rule would amend 46 CFR part 2, ''Vessel Inspections'', Subpart 2.01, ''Inspecting and Certificating of Vessels'' including Section 2.01–25, ''International Convention for Safety of Life at Sea'' to include the new Polar Ship Certificate. The proposed rule would also amend 46 CFR part 8, ''Vessel Inspection

[1] *http://www.imo.org/en/MediaCentre/HotTopics/polar/Documents/POLAR%20CODE%20TEXT%20AS%20ADOPTED.pdf.*

Alternatives'', Subpart C, ''International Convention Certificate Issuance'', Section 8.320, ''Classification Society Authorization to Issue International Certificates'', at paragraph (b) to include the Polar Ship Certificate as one of the certificates that can be issued by a recognized classification society on behalf of the Coast Guard.

Affected Population

Based on Coast Guard field data and Coast Guard databases such as the Marine Information for Safety and Law Enforcement (MISLE) database, the Coast Guard's Ship Arrival Notification System (SANS), and data from the Coast Guard's Navigation Data Center (NDC), we estimate the total number of U.S. vessels this proposed rule would affect to be about 41 total vessels. This is the number of U.S. vessels that have transited internationally in polar waters, which are generally above and below the 60 degree north and 60 degree south latitudes lines, respectively, over the past 5 years and have made port calls in Alaskan ports over this time period. Of the 41 U.S. vessels that have transited polar waters during the 5-year period, some entered polar waters in the first year and not the following year, but returned in subsequent years. The opposite is also true; some vessels that did not transit polar waters in the first year of the data period did so in the following years of the data period.

Recognized classification societies that have been granted delegated authority from the Coast Guard would issue the Polar Ship Certificate, an international convention certificate, on behalf of the Coast Guard for U.S.-flagged vessels that are classed under the authority in 46 CFR 8.320(a). Although multiple classification societies could request authorization to issue the Polar Ship Certificate on behalf of the Coast Guard, for the purpose of this analysis, the Coast Guard assumes one classification society would issue the Polar Ship Certificate to vessel owners and operators on behalf of the Coast Guard for vessels that are classed.

Cost Analysis

Classification Societies Cost

This proposed rule would amend 46 CFR 8.320(b) to enable recognized class societies to request authorization to issue the Polar Ship Certificate on behalf of the Coast Guard. For vessels that are not classed, the Coast Guard would issue the Polar Ship Certificate.

There are two cost elements associated with a classification society issuing a Polar Ship Certificate: The cost to review and return a signed copy of the Memorandum of Agreement (MOA) between the recognized classification society and the Coast Guard, and the cost to create the certificate once the MOA is approved by each party. As stated in 46 CFR 8.320(c), the Coast Guard will enter into an agreement with the classification society to issue international convention certificates such as the Polar Ship Certificate. The MOA essentially represents a delegation letter and is a standard document that allows a recognized classification society to issue the Polar Ship Certificate on behalf of the Coast Guard.

Based on Coast Guard data from the Office of Design and Engineering Standards, we estimate it would take a recognized classification society 1 hour to review the MOA. A classification and documentation specialist would review the MOA and because there is no equivalent labor category in the Bureau of Labor Statistics' (BLS) Occupational Employment Statistics National Industry-Specific Occupational Employment and Wage Estimates for May 2015, we used the ''Business Operations Specialist, All Other'' (Occupation Code 13–1199) category for Deep Sea, Coastal, and Great Lakes Water Transportation with a North American Industry Classification Code of 483100 as a representative occupation. The mean hourly wage rate for this occupation is $38.63. Since this is an unloaded hourly wage rate, we added a load factor to obtain a loaded hourly wage rate. We used BLS' 2015 Employer Cost for Employee Compensation databases to calculate and apply a load factor of 1.53 to obtain a loaded hourly labor rate of about $59.10 for this occupation.[2] We also estimate it would take a recognized classification society attorney 1 hour to review the MOA for legal sufficiency. Using the Bureau of Labor Statistics' (BLS) Occupational Employment Statistics National Industry-Specific Occupational Employment and Wage Estimates for May 2015, we used the category ''Lawyers'' (Occupation Code 23–1011) for Deep Sea, Coastal, and Great Lakes Water Transportation with a North American Industry Classification Code of 483100. The mean hourly wage for this occupation is $65.51. Since this is an unloaded hourly wage rate, we apply the same load factor of 1.53 as derived above to obtain a loaded hourly wage rate of about $100.23.

We estimate the one-time cost of the proposed rule to the classification society to review the MOA to be about $162.33, undiscounted, which includes a $3 postage cost to mail the signed MOA to the Coast Guard for approval and signature [($59.10 × 1 hour) + ($100.23 × 1 hour) + $3 for postage].

Based on a recognized classification society estimate, it would take approximately 40 hours to create the Polar Ship Certificate once the MOA is approved. As with the MOA, a classification and documentation specialist would create the certificate. We again used the ''Business Operations Specialist, All Other'' as a representative occupation. We estimate the one-time labor cost for a documentation specialist to create the certificate to be about $2,364.00 (40 hours[3] × $59.10/hour), undiscounted. Since the certificate is presented to a vessel owner or operator during the normal course of a vessel survey, we did not estimate a cost for this action.

We estimate the total undiscounted cost of the proposed rule to a recognized classification society to be about $2,526.33 ($2,364 document development cost + $162.33 MOA review cost).

Vessel Cost

There are two cost elements associated with vessel owners and operators: The fee a recognized classification society would charge a vessel owner or operator for issuing the certificate for U.S. classed vessels only, and the cost associated with a crewmember posting the certificate onboard a vessel. Based on Coast Guard vessel data, approximately 20 percent, or 8 out of the 41 U.S.-flagged vessels, are not classed by a recognized classification society.

The entry into force date for the Polar Code is Jan 1, 2017 but the requirement for ships is to have the certificate by their first renewal or intermediate exam after the entry into force date. This is a phased in approach that will likely

[2] Information can be viewed at, *http://www.bls.gov/oes/current/naics4_483100.htm.* A loaded labor rate is what a company pays per hour to employ a person, not the hourly wage. The loaded labor rate includes the cost of benefits (health insurance, vacation, etc.). The load factor for wages is calculated by dividing total compensation by wages and salaries. For this analysis, we used BLS' Employer Cost for Employee Compensation/Transportation and Materials Moving Occupations, Private Industry Report (Series IDs, CMU2010000520000D and CMU2020000520000D for all workers using the multi-screen data search). Using 2015 Q4 data for the cost of compensation and cost per hour worked, we divide the total compensation amount of $27.46 by the wage and salary amount of $17.91 to obtain the load factor of about 1.53, rounded. *See* the following Web site, *http://data.bls.gov/cgi-bin/dsrv.* Multiplying 1.53 by $38.63, we obtain a loaded hourly wage rate of about $59.10.

[3] Based on estimate provided by a recognized class society to USCG.

spread out the issuing of the certificates over a period of about 3 years. Therefore, the Coast Guard would issue the Polar Ship Certificate to those vessel owners and operators as part of its routine inspection regime. A recognized classification society would issue the Polar Ship Certificate to the remaining 33 vessel owners and operators in the first, second, third, sixth, seventh, and eighth year of the analysis period.

The Polar Ship Certificate is valid for a 5-year period and, after this time, the recognized classification society and the Coast Guard would issue a new Polar Ship Certificate to vessel owners and operators, depending upon whether a vessel is classed or not classed. The cost of the reissued Polar Ship Certificate is $100 if a recognized classification society issues the certificate (for 33 classed U.S. vessels); therefore, it would cost each U.S. classed vessel owner and operator $100 after 5 years to renew the certificate, or in the sixth, seventh, and eighth year of the analysis period. We assume a 3-year phase-in period for owners and operators to obtain the certificates. For the purpose of this analysis, we assume 13 U.S. vessels owners and operators (11 classed and 2 unclassed) would obtain a certificate in the first year and 14 (11 classed and 3 unclassed) U.S. vessel owners and operators would obtain one in the second year and third year. For reissuance, we again assume the same 13 vessel owners and operators would obtain a certificate in the sixth year and the same 14 vessel owners and operators would obtain one in the seventh and eighth year each; we divided the population accordingly to obtain even values.

Vessel owners and operators would be required to post the certificate in a conspicuous area onboard the vessel with other applicable operating certificates. Based on the Office of Management and Budget's (OMB) approved collection of information (COI) entitled ''Various International Agreement Safety Certificates,'' OMB control number 1625–0017, a crewmember onboard a vessel equivalent to a U.S. Coast Guard cadet would post the Polar Ship Certificate. Using the Coast Guard's Commandant Instruction 7310.1P for loaded hourly wages outside of the Government, the hourly wage rate of a person outside of the Government equivalent to a cadet is $26.00. We estimate it takes a crewmember about 6 minutes, or 0.1 hours, to post the Polar Ship Certificate at a labor cost of about $2.60 per vessel ($26.00 × 0.1 hours). To post the Polar Ship Certificate, we estimate the total initial cost of the proposed rule to 13 U.S. vessel owners and operators to be about $33.80 (13 U.S. classed and unclassed vessels × 0.1 hours × $26.00); regardless of whether the Polar Ship Certificate is issued by a recognized classification society, or by the Coast Guard. Owners and operators of U.S. vessels would incur this cost again in the sixth year because a crewmember would review and post the reissued certificate for the same 13 vessels.

We estimate the initial cost of the proposed rule to vessel owners and operators to be about $1,133.80 in the first year (11 classed vessels × $100) + (11 classed vessels × $2.60 to post the certificate) + two unclassed vessels × $2.60 to post the certificate). Because vessel owners and operators would be required to carry the Polar Ship Certificate beginning January 2017, the cost for the renewed certificate in the sixth year (or 5 years after the initial year) would again be $1,133.80 for these 13 vessels. In the second and third and seventh and eighth year, we estimate the cost for 14 U.S. vessel owners and operators to obtain and post a Polar Ship Certificate to be about $1,136.40 [(11 classed vessels × $100) + (11 classed vessels × $2.60 to post the certificate) + three unclassed vessels in each of these years × $2.60 each year to post the certificate]. See Table 1 below.

TABLE 1—SUMMARY OF CLASSIFICATION SOCIETY AND VESSEL OWNERS AND OPERATORS COSTS

[Undiscounted]

Cost item	Unit cost	Labor rate	Hours	Total cost
Classification Society Certificate Creation.		$59.10	40	$2,364 (incurred in year one).
Classification Society Review of MOA.		$100.23 (Attorney)	1	$162.33 (incurred in year one and includes $3 postage).
		$59.10 (Business Operations Specialist).	1	
Certificate Fee Charged to Vessel Owners and Operators.	$100			$1,100 (incurred in years one to three and six to eight); $3,300 for 33 classed vessels in years one to three and six to eight.
Vessel Crewmember Reviews and Posts Certificate.		$26	0.1	$2.60 (incurred in year one to three and six to eight); $33.80 in year one and six and $36.40 in years two and three; seven and eight.
Total Undiscounted Cost (Initial year).				$3,660.13.

We estimate the total 10-year undiscounted cost to be $6,813.20 for all 41 U.S. vessel owners and operators ($1,133.80 in the first and sixth year + $1,136.40 in the second, third, seventh and eighth years of the analysis period). See Table 2 below.

We estimate the initial undiscounted cost of the proposed rule to a recognized classification society and to 13 (11 classed and 2 unclassed vessels) U.S. vessel owners and operators to be about $3,660.13 ($2,364 for the classification society to create the certificate + $162.33 for the classification society to review the MOA + $1,100 fee charged by a classification society to issue the certificate to the 11 classed vessel owners and operators + $33.80 for crewmembers of the 13 classed and unclassed vessels to post the certificate). We estimate the total 10-year undiscounted cost of the proposed rule to industry to be about $9,339.53 ($3,660.13 in the first year + $1,136.40 in the second, third, seventh, and eighth years + $1,133.80 in the sixth year). See Table 2 below.

We estimate the 10-year present value, or discounted cost of the proposed rule to industry to be between $7,465.49 and $8,435.28 at 7 and 3 percent discount rates, respectively. We estimate the annualized cost to be between $1,062.92 and $988.87 at 7 and

3 percent discount rates, respectively.
See Table 2 below.

TABLE 2—TOTAL COSTS OF THE PROPOSED RULE TO INDUSTRY

[10-Year period of analysis, 7 and 3 percent discount rates, 2016 dollars]

Period	Cost (undiscounted)	7%	3%
1	$3,660.13	$3,420.68	$3,553.52
2	1,136.40	992.58	1,071.17
3	1,136.40	927.64	1,039.97
4			
5			
6	1,133.80	755.50	949.54
7	1,136.40	707.69	924.00
8	1,136.40	661.40	897.08
9			
10			
Total	9339.53	7,465.49	8,435.28
Annualized		1,062.92	988.87

Note: Totals may not sum due to independent rounding.

Government Costs

There are 3 cost elements associated with this proposed rule for the Coast Guard: A one-time cost of creating the certificate and issuing (in the initial year, second, third, sixth, seventh, and eighth year) the Polar Ship Certificate to a vessel owner or operator if a vessel is not classed by a class society, reviewing the certificate onboard a vessel as part of the Coast Guard's routine inspection regime, and a one-time cost of creating and sending the delegation letter or MOA to a classification society for signature.

For the eight U.S. vessels that are not classed by a recognized classification society, the Coast Guard would issue the Polar Ship Certificate in the first through the third year and the sixth through the eighth year. Because of the phase-in period, we divided the eight vessels evenly over three years to arrive at two in the first and sixth year and three in the second, third, seventh, and eighth year, with the sixth, seventh, and eighth year being the years when the certificate is reissued.

Based on information from personnel in the Coast Guard's Office of Vessel Compliance, we estimate it takes Coast Guard personnel with the average equivalence of a GS–15 about 40 hours to create and review a Polar Ship Certificate at an average loaded hourly wage rate of $109 using the Coast Guard's Commandant Instruction 7310.1P. We estimate the one-time cost for the Coast Guard to create the Polar Ship Certificate to be about $4,360 (40 hours × $109/hour), for the eight U.S. vessels without a classification.

Based on an OMB-approved COI (Control Number 1625–0017), we estimate it takes a Coast Guard Officer, the Officer in Charge Marine Inspection (OCMI), or more specifically, a Lieutenant with the rank of an O–3, about 30 minutes, or 0.5 hours per vessel, to review the Polar Ship Certificate for validity and correctness (the Coast Guard issues and reviews the certificate at the same time during its normal inspection regime). Using the Coast Guard's Commandant Instruction 7310.1P for loaded hourly wages, an O–3 has a loaded hourly wage rate of $78.00. Therefore, we estimate the total undiscounted cost to the Government to review the Polar Ship Certificate for all 41 affected vessels to be about $1,599.00 ($78.00 × 41 vessels × 0.5 hours), or about $39.00 per vessel. We use the same methodology as above with owners and operators obtaining certificates over a three-year period (13 in the first and sixth year and 14 in the second, third, seventh and eighth year), with the sixth, seventh and eighth year being the renewal years. Again, 13 inspections (11 classed and 2 unclassed) would take place in the first and sixth year, and 14 (11 classed and 3 unclassed) in second, third, seventh, and eighth year. Therefore, the first year cost to the Government to review the certificate would be about $507.00 (11 classed and 2 unclassed vessels × $39.00). The Government would incur this cost again in the sixth year when the certificate is reissued. In years two, three, seven, and eight, the Government would incur a certificate review cost of about $546.00 (11 classed and 3 unclassed vessels × $39.00) in each of these years.

The Coast Guard would also examine the certificates of foreign-flagged vessels that enter U.S. ports in polar waters as part of its routine Port State Control vessel boardings. Because this will take place during routine Coast Guard examinations and for issuing certificates of compliance, the time it takes to perform this task is minimal and as such we do not estimate a cost to the Government.

Because this proposed rule would also enable a recognized classification society to issue the Polar Ship Certificate on behalf of the Coast Guard, the Coast Guard and a recognized classification society would enter into an MOA which delegates authority to the classification society and sets forth guidelines for cooperation between the Coast Guard and a classification society with respect to initial and subsequent inspections for certifications and periodic re-inspections or examinations of vessels of the United States, as defined by 46 U.S.C. 2101 (46).

Based on information from the Coast Guard's Office of Design and Engineering Standards, Coast Guard personnel with the average equivalence of a GS–15 would prepare the MOA for delivery to a classification society. Again, we used an average loaded hourly labor rate of $109 for a GS–15. We estimate it would take Government personnel about 6.25 hours to prepare and review the MOA. We estimate it would cost about $3 in postage for the Government to send the MOA to the classification society.

We estimate the total cost incurred by the Government for the MOA to be about $681.25 plus $3 for postage, or a total cost of $684.25, undiscounted (6.25 hours × $109). Other than the postage cost, other costs incurred are

opportunity costs, since personnel would perform this function in the normal course of his or her duties.

We estimate the total initial cost to the Government to be about $5,551.25 ($4,360 to create and review the certificate, $507.00 to review the certificates for 11 classed and 2 unclassed U.S. vessels, and $684.25 for the MOA). We estimate the total 10-year undiscounted cost to the Government to be about $8,242.25 ($5,551.25 in the initial year + $546.00 in the second, third, seventh and eighth years + $507.00 in the sixth year). We estimate the 10-year present value, or discounted cost of the proposed rule to the Government, to be between $7,106.31 and $7,703.46, using 7 and 3 percent discount rates, respectively. We estimate the annualized cost to be between $1,011.78 and $903.08, using 7 and 3 percent discount rates, respectively. See Table 3 below.

TABLE 3—TOTAL COSTS OF THE PROPOSED RULE TO THE GOVERNMENT

[10-Year period of analysis, 7 and 3 percent discount rates, 2016 dollars]

Period	Cost (undiscounted)	7%	3%
1		$5,188.08	$5,389.56
2		476.90	514.66
3		445.70	499.67
4			
5			
6		337.84	424.60
7		340.02	443.95
8		317.78	431.02
9			
10			
Total	8,242.25	7,106.31	7,703.46
Annualized		1,011.78	903.08

Note: Totals may not sum due to independent rounding.

Total Cost of the Proposed Rule to Industry and Government

We estimate the total 10-year combined undiscounted cost of the proposed rule to industry and the Government to be about $17,582. We estimate the 10-year present value, or discounted cost of the proposed rule to industry and the Government, to be between $14,572 and $16,139 at 7 and 3 percent discount rates, respectively. We estimate the annualized cost to be between $2,075 and $1,892 using the same discount rates. See Table 4 below.

TABLE 4—SUMMARY OF COSTS OF THE PROPOSED RULE TO INDUSTRY AND GOVERNMENT

[10-Year period of analysis, 2016 dollars]

Type of cost	Industry	Government	Total cost	Annualized
Undiscounted	$9,339.53	$8,242.25	$17,581.78	
7%	7,465.49	7,106.31	14,571.80	2,074.70
3%	8,435.28	7,703.46	16,138.74	1,891.95

Benefits

The primary benefit of this proposed rule is to ensure that vessel owners and operators have a valid Polar Ship Certificate onboard the vessel, which shows compliance with applicable SOLAS regulations and requirements. Without a Polar Ship Certificate, a vessel would be subject to deficiencies, detention, denial of entry, or expulsion from the polar waters of other port States. Adherence to SOLAS would ensure vessels are capable of operating in polar waters, and the hazards and adverse weather conditions unique to polar waters. Furthermore, since the United States is a signatory to SOLAS and has a treaty obligation to ensure compliance with SOLAS requirements, this rulemaking would ensure that the United States is compliant with this SOLAS requirement.

Alternatives

When creating this proposed rule, the Coast Guard considered several alternatives. The previous analysis represents the preferred alternative, which would ensure U.S. vessel owners and operators that operate vessels in polar waters would be compliant with the IMO Polar Code and SOLAS Convention. With the carriage of the Polar Ship Certificate onboard vessels, U.S. vessel owners and operators would be compliant with the SOLAS convention and applicable SOLAS operating requirements when transiting in polar waters.

Alternative 1: Preferred Alternative

The analysis for this alternative appears in the ''Regulatory Analysis'' section of the preamble of this proposed rule.

Alternative 2: No Action Alternative

In this alternative, the United States would take no action regarding the issuance of a Polar Ship Certificate and none of the costs itemized in the preferred alternative would be incurred. However, with this alternative, the United States would not be compliant with its international legal obligations as a signatory Government to the SOLAS Convention. Additionally, the lack of appropriate certifications would likely negatively impact U.S.-flagged vessels on international voyages in polar waters of other port States. United States vessels would potentially be subject to deficiencies, detentions, denial of entry, or expulsion from the polar waters of other port states due to the lack of proper certificates. Because the United States would not meet its international treaty obligations in this

alternative, the Coast Guard rejects this alternative.

Alternative 3: Large Scale Regulatory Implementation of the Polar Code

In this alternative, the Coast Guard would implement the entire Polar Code in one regulatory effort. This would create or modify regulations throughout 46 and 33 CFR. The affected vessels, operators, and the Government would also incur the costs and impacts of the implementation of the entire Polar Code from a single regulatory effort. The Coast Guard rejected this alternative because it would greatly delay the issuance of the certificate beyond the January 1, 2017 effective date of the Polar Code.

By moving forward with the proposed alternative, U.S. vessel owners and operators who obtain a Polar Ship Certificate would be in compliance with the operating requirements in the SOLAS Convention. Therefore, they would be permitted to transit in polar waters of foreign nations as soon as possible after January 1, 2017, without adverse consequences such as denial of entry, expulsion, or possibly detainment.

B. Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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. In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Coast Guard prepared this threshold analysis that examines the impacts of the proposed rule on small entities.

Based on our analysis of the entities affected by this proposed rule, all of the 41 affected U.S.-flagged vessels are owned by U.S. entities. To determine which entities are small, we compiled the data used in this analysis from publicly available and proprietary sources such as Manta and Cortera, and from the affected entities' Web sites. We used available owner's business information to identify the entities' primary line of business as coded by the North American Industry Classification System (NAICS) to find employee and revenue size information. We used this information to determine whether we should consider a business ''small'' by comparing it to the Small Business Administration's (SBA) ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes.'' In some cases, SBA classifies businesses on a standard either based on the number of employees or annual revenues.[4] We found that no small government jurisdictions or non-profits own any of the U.S. vessels affected by this proposed rule.

We found that 19 of the 41 (46 percent) affected companies are small entities and the remaining companies are not small, based on SBA's size standards. We found 11 different NAICS codes represent the 19 small entities with the NAICS code 488330, ''Navigational Services to Shipping'', representing 8 of the 19 small entities or 42 percent of them.

We estimate the initial cost to each classed vessel owner and operator to be about $102.60 [$1,100/11 classed U.S vessel owners and operators that have their vessels classed by a class society + $28.60 (11 classed vessels × $2.60)/11 (cost for crewmembers of 11 classed U.S. vessel owners and operators to post the certificate divided by the number of U.S. classed vessel owners and operators. Again, in the sixth year, these 11 classed U.S. vessel owners and operators would incur this cost)]. In the second, third, seventh, and eighth year, 11 classed vessel U.S. vessel owners and operators would incur this same cost. The eight U.S. vessel owners who own vessels that are not classed would only incur a cost of $2.60 per vessel in the each of the years described above or the first (two vessels) through the third year (three vessels in the second and third year each) and sixth (the same two vessels as in the first year) through the eighth year (the same three vessels as in the second and third year in the seventh and eighth year each) of the analysis period.

Of the 19 small entities, 16 had annual revenue information (the remaining three small entities only had employee information). Of the 16, 12 are classed, which means four (12/3 years for the phase-in period) would incur the $102.60 in the initial year and again in the second and third year and for reissuance of the certificate again in the sixth, seventh, and eighth year of the analysis period. The four that are not classed would only incur the cost of posting the certificate of $2.60 in each year described above (or essentially one in the first year and second year and again in the sixth and seventh year when the certificate is reissued and two in the third year and again in the eighth year when the certificate is reissued). All 16 small entities or 100 percent would have an annual revenue impact of less than 1 percent in the initial year and in the second, third, sixth, seventh, and eighth year of the analysis period. Thus, the estimated impact on the affected entities is not a significant economic impact.

Based on the preceding analysis, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult CDR Todd Howard using the contact information given in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. 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.

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).

D. Collection of Information

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requires that the Coast Guard consider the impact of paperwork and other information collection burdens imposed on the

[4] Readers can access small entity information online at *http://www.sba.gov/size/indextableofsize.html.*

public. According to the 1995 amendments to the Paperwork Reduction Act, an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number.

This action contains proposed amendments to the existing information collection requirements previously approved under OMB Control Number 1625–0017.

As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The summary of revised 1625–0017 collection follows:

Title: Various International Agreement Safety Certificates.

OMB Control Number: 1625–0017.

Summary of the Collection of Information: The International Convention for the Safety of Life at Sea (SOLAS) is a product of the International Maritime Organization (IMO), an agency of the United Nations. SOLAS applies to all mechanically propelled cargo and tank vessels of 500 or more gross tons (GT), and to all mechanically propelled passenger vessels carrying more than 12 passengers that engage in international voyages. By IMO's definition, an ''international voyage'' means a voyage from a country to which the Convention applies to a port outside the country, or vice versa. The United States, represented by the U.S. Coast Guard, was a major contributor and proponent of the 1974 Convention (SOLAS 74). President Carter's Executive Order 12234 (September 3, 1980), noted that SOLAS 74 was signed at London on November 1, 1974, proclaimed by the President of the United States on January 28, 1980, and entered into force for the United States on May 25, 1980.

SOLAS 1974 currently requires one or more of the following certificates to be carried on onboard certain passenger and cargo ships engaged in international voyages (46 CFR 2.01–25):

(1) Passenger Ship Safety Certificate and Record
(2) Cargo Ship Safety Construction Certificate
(3) Cargo Ship Safety Equipment Certificate and Record
(4) Cargo Ship Safety Radio Certificate (issued by Federal Communications Commission (FCC))
(5) Nuclear Passenger Ship Safety Certificate
(6) Nuclear Cargo Ship Safety Certificate
(7) Safety Management Certificate
(8) International Ship Security Certificate
(9) High-Speed Craft Safety Certificate

The Coast Guard is adding the Polar Ship Certificate to the list of certificates that it can issue.

Need for Information: In June of 2015, in resolutions MSC.384(94) and MEPC.264(68), the International Maritime Organization (IMO) adopted the International Code for Ships Operating in Polar Waters (Polar Code). The Polar Code raises the safety standards for commercial ships operating in or transiting through Arctic and Antarctic waters as well as enhances environmental protection for polar waters that include coastal communities in the U.S. Arctic. As a signatory to the International Convention for the Safety of Life at Sea (SOLAS), the United States has a treaty obligation to ensure compliance with SOLAS requirements.

All mechanically propelled passenger vessels carrying more than 12 passengers that engage in international voyages and all mechanically propelled cargo vessels of more than 500 gross tons that engage in international voyages within polar waters as defined by the Polar Code would be required to have the Polar Ship Certificate. The Polar Ship Certificate is valid for 5 years.

The purpose of this rulemaking is to ensure that marine inspectors could issue certificates required by the Polar Code and that these certificates are being carried on all applicable vessels. Additionally, this rulemaking will add the Polar Ship Certificate to the list of certificates that classification societies could issue on behalf of the Coast Guard-in consideration of hazards and conditions unique to polar waters and a potential increase in traffic in Arctic and Antarctic waters. These additional hazards include navigation in ice and low temperatures, high latitude communications and navigation, remoteness from response resources, and limited hydrographic charting.

We calculate the hour burden on an annual basis, which takes into account the reissuance of the certificate every fifth year. The estimated burden is 1/10 of an hour or 6 minutes. About 8 vessels (41 total vessels/5 years) annually equates to 48 minutes or 0.8 hours for the hour burden. Or equivalently, 13 classed and unclassed U.S. vessels (11 classed and 2 unclassed) × 6 minutes in the first and sixth years + 14 classed unclassed U.S vessels (11 classed and 3 unclassed) × 6 minutes in the second, third, seventh and eighth year for a total of 492 minutes divided by 82 vessels (13 in the first and sixth years and 14 in the second, third, seventh, and eighth year of the analysis period. Recall, because vessel owners and operators would have 3 years to obtain a certificate, we divided the population essentially into thirds, 13 in the first and sixth years and 14 in the second, third, and seventh and eighth years).

Proposed use of Information: The Polar Ship Certificate attests that the vessel has met applicable requirements of SOLAS to the satisfaction of the U.S. Government. Without the certificate, U.S.-flagged vessels could be detained in foreign ports as being unsafe.

Description of the Respondents: Respondents are the owner, agent, Master, operator, or person in charge of a U.S.-flagged vessel that transits in polar waters.

Number of Respondents: The existing OMB-approved number of respondents is 413. This proposed rule would not change the number of respondents because the vessel population that would be affected is a subset of the existing number of respondents; this proposed rule is not adding new respondents to this collection.

Frequency of Response: The existing OMB-approved number of responses is 912. This proposed rule would increase the number of responses by 14 annually (41 vessels/3-year renewal period) to 926.

Burden of Response: The existing OMB-approved burden of response is 6 minutes, or 0.1 hours, or the time it takes for a crewmember of a vessel to post the Polar Ship Certificate onboard the vessel.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 94 hours. This proposed rule would increase the burden hours annually by one hour. The estimated total annual burden would now be 95 hours annually.

As required by 44 U.S.C. 3507(d), we will submit a copy of this proposed rule to OMB for its review of the COI.

We ask for public comment on the proposed COI to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden

are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the COI, submit them both to OMB and to the Docket Management Facility where indicated under the **ADDRESSES** section of this proposed rule, by the date under the **DATES** section.

You need not respond to a COI unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the COI requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (''Federalism'') if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements as described in Executive Order 13132. Our analysis is explained below.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that Coast Guard regulations regarding vessel design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning issued under the authority of 46 U.S.C. 3306, 3703, 7101, and 8101 are within fields foreclosed from regulation by the States. *See United States* v. *Locke,* 529 U.S. 89, 90 (2000) (stating ''Congress has left no room for state regulation of these matters.''). This rule adds the Polar Ship Certificate to the list of certificates required, if applicable, by the SOLAS. Additionally, this rule adds this certificate to the list of SOLAS certificates that recognized classification societies are authorized to issue on behalf of the Coast Guard. The issuance of international certificates is within the sole purview of the Coast Guard to regulate pursuant to 46 U.S.C. 3306, 3703, 7101, and 8101; Executive Order 12234; and the principles discussed in *Locke.* Thus, the regulations are consistent with the principles for federalism and preemption requirements in Executive Order 13132.

While it is settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determination. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION** section of this preamble.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (''Governmental Actions and Interference with Constitutionally Protected Property Rights'').

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370f, and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This proposed rule involves: (1) Adding a Polar Ship Certificate to the list of certificates required, if applicable, by SOLAS; and (2) adding the Polar Ship Certificate to the list of SOLAS certificates that recognized classification societies may issue on behalf of the Coast Guard. These

proposed actions constitute editorial or procedural changes concerning vessel documentation requirements (*i.e.,* issuance of Polar Ship Certificates) and the delegation of authority for issuing such certificates. Thus, this proposed rule is likely to be categorically excluded under section 2.B.2 and figure 2–1, paragraphs (34)(a), (b), and (d) of the Instruction. This proposed rule would promote the Coast Guard's maritime safety and environmental protection missions. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

46 CFR Part 2

Marine Safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 8

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 2 and 8 as follows:

Title 46—Shipping

PART 2—VESSEL INSPECTIONS

■ 1. The authority citation for 46 CFR part 2 continues to read as follows:

Authority: Sec. 622, Pub. L. 111–281; 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2103, 2110, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277, sec. 1–105; Department of Homeland Security Delegation No. 0170.1(II)(77), (90), (92)(a), (92)(b).

§ 2.01–6 [Amended]

■ 2. In § 2.01–6(a)(1), after the words ''passengers in U.S. ports'' and before the words ''holds a valid'', remove the word ''and''; and after the text ''Passenger Ship Safety Certificate'', add the text '', and, if applicable, holds a valid Polar Ship Certificate''.

■ 3. Amend § 2.01–25 by adding paragraphs (a)(1)(x) and (a)(2)(x) to read as follows:

§ 2.01–25 International Convention for Safety of Life at Sea, 1974.

(a) * * *
(1) * * *
(x) Polar Ship Certificate.
(2) * * *
(x) Polar Ship Certificate.
* * * * *

PART 8—VESSEL INSPECTION ALTERNATIVES

■ 4. The authority citation for 46 CFR part 8 continues to read as follows:

Authority: 33 U.S.C. 1903, 1904, 3803 and 3821; 46 U.S.C. 3103, 3306, 3316, and 3703; Department of Homeland Security Delegation No. 0170.1 and Aug. 8, 2011 Delegation of Authority, Anti-Fouling Systems.

■ 5. Amend § 8.320 as follows:

■ a. In paragraph (b)(13), remove the word ''and'';

■ b. In paragraph (b)(14), remove the text ''.''; and add, in its place, the text ''; and''; and

■ c. Add new paragraph (b)(15) to read as follows:

§ 8.320 Classification society authorization to issue international certificates.

* * * * *
(b) * * *
(15) Polar Ship Certificate.
* * * * *

Dated: November 16, 2016.

F.J. Sturm,

Acting Director, Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2016–27989 Filed 11–21–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–2016–0136]

Pipeline Safety: Meeting of the Gas Pipeline Safety Advisory Committee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces a public meeting of the Technical Pipeline Safety Standards Committee, also known as the Gas Pipeline Advisory Committee (GPAC). The GPAC will meet to discuss a proposed rulemaking to address regulatory requirements for onshore gas transmission and gathering pipelines.

DATES: The committee will meet on Wednesday, December 7, 2016, from 8:30 a.m. to 5 p.m. and on Thursday, December 8, 2016, from 8:30 a.m. to 5 p.m., EST.

The meetings will not be web cast; however, presentations will be available on the meeting Web site and posted on the E-Gov Web site: *http://www.regulations.gov* under docket number PHMSA–2016–0136 within 30 days following the meeting.

ADDRESSES: The meeting will be held at a location yet to be determined in the Washington, DC Metropolitan area. The meeting location, agenda and any additional information will be published on the following pipeline advisory committee meeting and registration page at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=121.*

Public Participation

This meeting will be open to the public. Members of the public who wish to attend in person are asked to register at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=121* no later than December 1, 2016, in order to facilitate entry and guarantee seating. Members of the public who attend in person will also be provided an opportunity to make a statement during the meeting.

Written comments: Persons who wish to submit written comments on the meeting may be submitted to the docket in the following ways:

E-Gov Web site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: Identify the docket number PHMSA–2016–0136 at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, consider reviewing DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477) or view the Privacy Notice at *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m.,

Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2016–0136.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail.

Privacy Act Statement

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.*

Services for Individuals with Disabilities: The public meeting will be physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Cheryl Whetsel at *cheryl.whetsel@dot.gov* by December 1, 2016.

FOR FURTHER INFORMATION CONTACT: For information about the meeting, contact Cheryl Whetsel by phone at 202–366–4431 or by email at *cheryl.whetsel@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Meeting Details and Agenda

The GPAC will be discussing the proposed rule, ''Safety of Gas Transmission and Gathering Pipelines'' published in the **Federal Register** on April 8, 2016, (81 FR 20722) and on the associated regulatory analysis. PHMSA is proposing changes to part 192 which include:

- Requiring periodic assessments of pipelines in locations where persons are expected to be at risk that are not already covered under the integrity management program requirements;
- Modifying the repair criteria, both inside and outside of high consequence areas (HCAs);
- Requiring inspections of pipelines in areas affected by extreme weather, man-made and natural disasters, and other similar events;
- Providing additional specificity for inline inspection, including explicit requirements to account for uncertainty of reported inspection data when evaluating inline inspection data to identify anomalies;
- Expanding integrity assessment methods to explicitly address guided wave ultrasonic inspection, and excavation with direct in-situ examination;
- Providing clearer functional requirements for conducting risk assessment for integrity management, including addressing seismic risk;
- Expanding the mandatory data collection and integration requirements for integrity management, including data validation and seismicity;
- Adding requirements to address Management of Change;
- Repealing the use of API 80 for gathering lines;
- Applying Type B requirements to newly regulated Type A gathering lines in Class 1 locations to > 8-inch along with emergency requirements (GAO Recommendation 14–667);
- Extending the reporting requirements to all gathering lines;
- Expanding requirements for corrosion protection to specify additional post-construction quality checks, and periodic operational and maintenance checks to address coating integrity, cathodic protection, and gas quality monitoring;
- Requiring operators to report MAOP Exceedance;
- Requiring safety features on Launchers and Receivers;
- Adding certain types of roadways to definition of ''identified sites'' (NTSB P–14–1); and
- Addressing grandfather pipe; and pipe with inadequate records.

The Agenda will be published on the PHMSA Web site.

II. Committee Background

The GPAC is a statutorily mandated advisory committee that advises PHMSA on proposed gas pipeline safety standards and risk assessments for transporting gas and for gas pipeline facilitiesnatural gas pipelines. The committee is established in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, as amended) and 49 U.S.C. 60115. The committee consists of 15 members—with membership evenly divided among the federal and state governments, the regulated industry, and the general public. The committees advise PHMSA on the technical feasibility, reasonableness, cost-effectiveness, and practicability of each proposed pipeline safety standard.

Issued in Washington, DC on November 17, 2016, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Acting Associate Administrator for Pipeline Safety

[FR Doc. 2016–28065 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 81, No. 225

Tuesday, November 22, 2016

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

Rural Utilities Service

Dairyland Power Cooperative: Notice of Intent To Prepare an Environmental Impact Statement and Hold Additional Public Scoping Meetings

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement and hold additional public scoping meetings.

SUMMARY: The Rural Utilities Service (RUS) intends to prepare an Environmental Impact Statement (EIS) and hold additional public scoping meetings in connection with possible impacts related to the Cardinal-Hickory Creek Transmission Line Project proposed by Dairyland Power Cooperative (DPC). Other utilities participating in the Project are American Transmission Company LLC, by its corporate manager ATC Management Inc. and ITC Midwest LLC.

The proposal consists of the construction of a 345-kilovolt (kV) transmission line and associated infrastructure connecting the Hickory Creek Substation in Dubuque County, Iowa, with the Cardinal Substation in the Town of Middleton, Wisconsin (near Madison, Wisconsin). The Project also includes a new intermediate 345/138-kV substation near the Village of Montfort in either Grant County or Iowa County, Wisconsin. The total length of the 345-kV transmission lines associated with the proposed project will be approximately 125 miles. DPC and the other project participants have identified proposed and alternate segments and locations for transmission lines and associated facilities and for the intermediate substation. Dairyland Power Cooperative is requesting RUS to provide financing for its portion of the proposed project.

DATES: RUS will conduct two public scoping meetings in an open-house format at the following locations:

Date	Location	Time	Venue
December 6, 2016	Peosta, Iowa	4:00–7:00 p.m	Peosta Community Center, 7896 Burds Road, Peosta, IA 53068.
December 7, 2016	Barneveld, Wisconsin	4:00–7:00 p.m	Deer Valley Lodge, 401 West Industrial Drive, Barneveld, WI 53507.

The additional meetings are being held to give the public more opportunities to review the project and provide comments.

ADDRESSES: To send comments or for further information, contact Dennis Rankin, Environmental Protection Specialist, U.S. Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue SW., Room 2244, Stop 1571, Washington, DC 20250–1571 Email: *dennis.rankin@wdc.usda.gov* Washington, DC 20250–1571. The public comment period for the proposed project will extend through January 6, 2017.

An Alternative Evaluation Study (AES) and Macro Corridor Study (MCS), prepared by Dairyland Power Cooperative, will be presented at the public scoping meetings. The reports are available for public review at the RUS address provided in this notice and at Dairyland Power Cooperative, 3251 East Avenue South, La Crosse, WI 54602. In addition, the reports will be available at RUS' Web site, *http://www.rd.usda.gov/publications/environmental-studies/impact-statements* and at local libraries in the project area.

SUPPLEMENTARY INFORMATION: Preliminary proposed transmission line corridors, the siting area for the intermediate substation, and the two existing end-point substations have been identified. The EIS will address the construction, operation, and management of the proposed project, which includes the following: A new 345-kV terminal within the existing Hickory Creek Substation in Dubuque County, Iowa; a new intermediate 345/138-kV substation near the Village of Montfort in either Grant or Iowa County, Wisconsin; a new 345 kV terminal within the existing Cardinal Substation in the Town of Middleton in Dane County, Wisconsin; a new 45- to 65-mile (depending on the final route) 345-kV transmission line between the Hickory Creek Substation and the intermediate substation; a new 45- to 60-mile (depending on the final route) 345-kV transmission line between the intermediate substation and the existing Cardinal Substation; a short, less than one-mile, 69-kV line in Iowa; facility reinforcement needed in Iowa and Wisconsin; construction and maintenance of access roads for all proposed transmission lines and rebuild of the Turkey River Substation in Dubuque County, Iowa with two 161/69 kV transformers, four 161-kV circuit breakers, and three 69-kV circuit breakers.

Total length of the transmission lines for the proposed project will be approximately 125 miles. The project study area includes part or all of the following counties in Iowa: Clayton and Dubuque. In Wisconsin, the project area includes parts of the following counties: Dane, Grant, Iowa, and Lafayette.

Among the alternatives RUS will address in the EIS is the No Action alternative, under which the project would not be undertaken. In the EIS, the effects of the proposed project will be compared to the existing conditions in the area affected. Alternative transmission line corridors and the intermediate substation location will be refined as part of the EIS scoping process and will be addressed in the Draft EIS. RUS will carefully study public health and safety, environmental impacts, and engineering aspects of the proposed project and all related facilities.

The U.S. Army Corps of Engineers (USACE) and the U.S. Fish and Wildlife

Service (USFWS) are participating in the environmental review process as cooperating agencies, with RUS as the lead Federal agency.

RUS will use input provided by government agencies, private organizations, and the public in the preparation of the Draft EIS. The Draft EIS will be available for review and comment for 45 days. A Final EIS that considers all comments received will subsequently be prepared. The Final EIS will be available for review and comment for 30 days. Following the 30-day comment period, RUS will prepare a Record of Decision (ROD). Notices announcing the availability of the Draft EIS, the Final EIS, and the ROD will be published in the **Federal Register** and in local newspapers.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant federal, state, and local environmental laws and regulations and completion of the environmental review requirements as prescribed in the RUS Environmental Policies and Procedures (7 CFR part 1970).

Dated: November 15, 2016.

Kellie Kubena,

Director, Engineering and Environmental Staff, Rural Utilities Service.

[FR Doc. 2016–27988 Filed 11–21–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–79–2016]

Foreign-Trade Zone (FTZ) 38—Spartanburg County, South Carolina; Notification of Proposed Production Activity; ZF Transmissions Gray Court, LLC; (Automatic Transmission and Powertrain Subassemblies and Parts, Transmission Shafts and Cranks); Gray Court, South Carolina

ZF Transmissions Gray Court, LLC (ZF Transmissions) submitted a notification of proposed production activity to the FTZ Board for its facilities in Gray Court, South Carolina within FTZ 38. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 10, 2016.

ZF Transmissions already has authority to produce automatic transmissions for motor vehicles within Sites 20 and 25 of FTZ 38. The current request would add finished products and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt ZF Transmissions from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, ZF Transmissions would be able to choose the duty rates during customs entry procedures that apply to automatic transmissions and powertrain subassemblies and parts, transmission shafts and cranks (duty rate ranges from free to 2.5%) for the foreign-status materials/components noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Adhesive labels; steel chains; steel torx screws; steel hexagon screws; steel hexalobular driving screws; steel hexalobular and hexalobular screws; snap rings; studs; split rings; wire rings; supporting rings; retaining clamps; cylindrical pins; retaining rings; USIT rings; stop rings; pole rings; U-rings; crescent rings; damper rings; slot pins; grooved pins; splash rings; support rings; pressure pins; differential shafts; plugs; retaining clips; detent disks; cable terminals; sockets; retaining rings; circlips; balls; clips; closing caps; shackles; oil coolers; tapered-roller bearings; roller bearings; axial needle bearings; needle cages; needle sleeves; combination bearings; needle bearings; axial bearings; axial plain bearings; plain bearings; metal gaskets; metal pressure seals; metal gaskets; front axle shafts; axle drives; stator shafts; input shafts; output shafts; differential and bearing brackets; differential covers; silencers; gear shift systems; guide discs; rear axle outputs; spur gears and differentials; spur gear drives and differentials; differential cases; holding fixtures; frames; front axle outputs; and, front axle differentials (duty rate ranges from free to 8.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 3, 2017.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: November 16, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–28111 Filed 11–21–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–162–2016]

Foreign-Trade Zone 163—Ponce, Puerto Rico, Application for Subzone, Best Petroleum Corporation, Toa Baja, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by CODEZOL, C.D., grantee of FTZ 163, requesting subzone status for the facility of Best Petroleum Corporation, located in Toa Baja, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on November 15, 2016.

The proposed subzone (5 acres) is located at Road #2, KM. 20.5, BO. Candelaria Arenas, Toa Baja. The proposed subzone would be subject to the existing activation limit of FTZ 163. No authorization for production activity has been requested at this time.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 3, 2017. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 17, 2017.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the

''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: November 15, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–28112 Filed 11–21–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–78–2016]

Foreign-Trade Zone 115—Beaumont, Texas; Expansion of Subzone 115B; ExxonMobil Oil Corporation; Jefferson and Liberty Counties, Texas

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Foreign-Trade Zone of Southeast Texas, Inc., grantee of FTZ 115, requesting an expansion of Subzone 115B on behalf of ExxonMobil Oil Corporation to include an additional site in Jefferson County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on November 15, 2016.

Subzone 115B was approved on October 13, 1995 (Board Order 780, 60 FR 54471–54472, October 24, 1995). The subzone (2,566 acres) currently consists of six sites located in Jefferson and Liberty Counties: *Site 1* (2,200 acres)—main refinery and petrochemical feedstock complex located along the Neches River at end of Burt Road in Jefferson County; *Site 2* (51 acres)—Mobil Colonial Tank Farm located at 13300 West Port Arthur Road in Jefferson County; *Site 3* (24 acres)—Mobil Hull underground storage facility located northwest of the refinery at end of Mobil Road in the City of Hull (Liberty County); *Site 4* (188 acres)—Daisetta underground petrochemical storage facility located northwest of the refinery at end of Bobcat Lane in the City of Daisetta (Liberty County); *Site 6* (38 acres)—Unocal Terminal located at State Highway 366 in Nederland (Jefferson County); and, *Site 7* (65 acres)—Sunoco Marine Terminal located at State Highway 347 in Nederland. (Site 5 expired in January 2000.)

The applicant is requesting authority to expand the subzone to include an additional site: *Proposed Site 8* (27.5 acres)—3275 Amoco Road EXN, Beaumont (Jefferson County). No additional authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is January 3, 2017. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 17, 2017.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: November 15, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–28108 Filed 11–21–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–77–2016]

Foreign-Trade Zone 21—Charleston, South Carolina; Application for Subzone; Volvo Car US Operations, Inc.; Ridgeville, South Carolina

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 21, requesting subzone status for the facility of Volvo Car US Operations, Inc., located in Ridgeville, South Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on November 14, 2016.

The proposed subzone (2,504 acres) is located at 1801 Volvo Drive, Ridgeville. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B–64–2016).

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 3, 2017. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 17, 2017.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: November 15, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–28110 Filed 11–21–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council Subcommittee on Export Administration; Notice of Open Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on December 7, 2016, 10:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Agenda

Open Session

1. Opening remarks by the Chairman and Vice Chairman.

2. Remarks by Deputy Secretary Bruce Andrews.

3. Final Thoughts.
4. Presentation of papers or comments by the Public.
5. STARS Data Elements.
6. Discussion of PECSEA Trade Priorities Paper.
7. Subcommittee Updates.

The open session will be accessible via teleconference to 25 participants on a first come, first served basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than November 30, 2016.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

For more information, call Yvette Springer at (202) 482–2813.

Dated: November 16, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–28128 Filed 11–21–16; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') published the *Preliminary Results* of the sixth administrative review of the antidumping duty order on certain steel threaded rod from the People's Republic of China (''PRC'') on May 13, 2016. The period of review (''POR'') is April 1, 2014, through March 31, 2015. This review covers two PRC exporters of subject merchandise, RMB Fasteners Ltd., IFI & Morgan Ltd., and Jiaxing Brother Standard Part Co., Ltd. (collectively ''the RMB/IFI Group''), and Zhejiang New Oriental Fastener Co., Ltd. (''New Oriental''). The final dumping margins are listed below in the ''Final Results of Administrative Review'' section of this notice.

DATES: Effective November 22, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew Devine or Paul Walker, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone 202–482–0238 or 202–482–0413, respectively.

SUPPLEMENTARY INFORMATION:

Background

As noted above, the Department published the *Preliminary Results* on May 13, 2016.[1] In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results.* Between June 20, 2016, and June 27, 2016, Vulcan Threaded Products Inc. (''Petitioner''), the RMB/IFI Group, and New Oriental submitted case and rebuttal briefs. On August 10, 2016, the Department extended the deadline for the final results to November 14, 2016.[2]

Scope of the Order

The merchandise covered by the order includes steel threaded rod. The subject merchandise is currently classifiable under subheading 7318.15.5051, 7318.15.5056, 7318.15.5090, and 7318.15.2095 of the United States Harmonized Tariff Schedule (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order, which is contained in the accompanying Issues and Decision Memorandum (''I&D Memo''), is dispositive.[3]

Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs by parties in this review in the I&D Memo. Attached to this notice, in Appendix I, is a list of the issues which parties raised. The I&D Memo is a public document and is on file in the Central Records Unit (''CRU''), Room B8024 of the main Department of Commerce building, as well as 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 in the CRU. In addition, a complete version of the I&D Memo can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed I&D Memo and the electronic versions of the I&D Memo are identical in content.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding our *Preliminary Results,* we have now recalculated a dumping margin based on revisions to the surrogate financial ratios and changes to the calculation methodology regarding treatment of New Oriental's cost, insurance, and freight (''CIF'') sales. For a list of all issues addressed in these final results, please refer to Appendix I accompanying this notice.

PRC-Wide Entity

The Department continues to find that the following six companies subject to this review that are not eligible for separate rate status or rescission are part of the PRC-wide entity: Brother Holding Group Co., Ltd.; Jiaxing Xinyue Standard Part Co., Ltd.; Zhejiang Heiter Industries Co., Ltd.; Zhejiang Heiter MFG & Trade Co., Ltd.; Zhejiang Junyue Standard Part Co., Ltd.; and Zhejiang Morgan Brother Technology Co., Ltd.

Final Results of Administrative Review

The weighted-average dumping margins for the administrative review are as follows:

Exporter	Weighted-average margin (percent)
IFI & Morgan Ltd. and RMB Fasteners Ltd. (collectively ''RMB/IFI Group'')	0.00
Zhejiang New Oriental Co., Ltd.	11.07

[1] *See Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2014–2015,* 81 FR 29843 (May 13, 2016) (''*Preliminary Results*'') and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James Doyle, Office Director, from Julia Hancock, Senior International Trade Compliance Analyst, ''Certain Steel Threaded Rod From the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review'' (August 10, 2016).

[3] For a full description of the scope of the order, *see* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Steel Threaded Rod From the People's Republic of China'' (November 14, 2015) (''I&D Memo'').

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.212(b), the Department has determined, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

Where the respondent reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[4] Where the Department calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates.[5] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[6] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[7]

Pursuant to the Department's assessment practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide entity rate. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide entity rate.[8]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-Wide rate of 206 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. The deposit requirements shall remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 14, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Issues and Decision Memorandum

I. Summary
II. Scope
III. Background
IV. Discussion of the Issues
Comment 1: Selection of Surrogate Country
Comment 2: Bulgarian Financial Ratios
Comment 3: Treatment of Irrecoverable VAT
Comment 4: Proposed Changes to the Calculation Methodology for New Oriental's CIF Sales
VI. Conclusion

[FR Doc. 2016–28109 Filed 11–21–16; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See* 19 CFR 351.212(b)(1).

[5] *Id.*

[6] *Id.*

[7] *See* 19 CFR 351.106(c)(2).

[8] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Initiation of Anticircumvention Inquiry on Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on available information, the Department of Commerce (Department) is self-initiating an anticircumvention inquiry to determine whether certain imports are circumventing the antidumping duty order on uncovered innerspring units (innerspring units) from the People's Republic of China (PRC).

DATES: Effective November 22, 2016.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2007, Petitioner [1] filed a petition seeking imposition of antidumping duties on imports of uncovered innerspring units from,

[1] Leggett and Platt, Incorporated.

among other countries, the PRC.[2] Following the completion of investigations by the Department and the U.S. International Trade Commission, the Department imposed an antidumping duty order on subject merchandise.[3]

In the sixth administrative review of the *Order*,[4] Petitioner requested that the Department review Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial) and East Grace Corporation. The Department initiated the review on April 3, 2015,[5] and sent questionnaires to the named respondents, including Macao Commercial. During the course of the sixth administrative review, and in response to the Department's original and supplemental questionnaires, Macao Commercial acknowledged that it imports innerspring unit components from the PRC for use in the production of innerspring units in Macau.[6] In the final results, the Department found that Macao Commercial failed to demonstrate that it had no shipments of PRC-origin innersprings, and assigned a rate to Macao Commercial using adverse facts available. The Department stated that this determination applied only with respect to Macao Commercial's PRC-origin subject merchandise, but explained that it intended to evaluate whether self-initiation of a circumvention inquiry would be warranted based upon information submitted during the review and in light of the Department's prior circumvention findings in this proceeding.[7]

[2] The petition also included imports of uncovered innerspring units from South Africa and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units From the People's Republic of China, South Africa, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 73 FR 4817 (January 28, 2008).

[3] *See Uncovered Innerspring Units From the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009) (''*Order*'').

[4] The sixth administrative review covered the period of review (''POR'') February 1, 2014, through January 31, 2015. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 18202 (April 3, 2015).

[5] *Id.*

[6] *See, e.g.,* Memorandum to the File ''Factual Information from the Sixth Administrative Review,'' dated concurrently with this initiation notice (AR6 Factual Information Memo), at Attachment 1. In the *AR6 Final Results,* we found that ''Macao Commercial submitted this inventory report in two different exhibits within its July 21, 2016 QR response and that within Exhibit 5 is an invoice for not just raw materials but PRC-origin innerspring components from Company X.'' *See Uncovered Innerspring Units From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 81 FR 62729 (September 12, 2016) (*AR6 Final Results*) and accompanying Issues and Decision Memorandum at Comment 1.

[7] *See AR6 Final Results.*

Scope of the Order

The merchandise subject to the *Order* is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.,* twin, twin long, full, full long, queen, California king, and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in the scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring. Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.0070, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the *Order* is dispositive.

Initiation of Circumvention Proceeding

Section 781(b)(1) of the Tariff Act of 1930, as amended (the Act) provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting anticircumvention inquiries, under section 781(b)(1) of the Act, the Department will also evaluate whether: (1) The process of assembly or completion in the other foreign country is minor or insignificant; (2) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (3) action is appropriate to prevent evasion of such an order or finding.

A. Merchandise of the Same Class or Kind

Available information shows that the innerspring units that Macao Commercial completes or assembles in Macau and subsequently ships to the United States are of the same class or kind as that subject to the *Order*.[8] Macao Commercial acknowledged this fact in the sixth administrative review when it stated: ''With respect to the Department's request for documentation demonstrating 'the production process of Macao Commercial and all affiliates in Macao that manufactured subject merchandise that was shipped to the United States during the POR,' as previously advised, Macao Commercial is the only entity which manufactures innersprings sold and shipped to the U.S.'' [9]

B. Completion of Merchandise in a Foreign Country

The *Order* indicates that innerspring units are assembled from three key components: Steel wire coils, helical wires, and in certain cases border rods.[10] Information from the sixth administrative review indicates that Macao Commercial sources components used in the production of innerspring units from the PRC, the country with respect to which the *Order* applies, and that Macao Commercial then sells innerspring units to the United States.[11]

C. Minor or Insignificant Process

Under section 781(b)(2) of the Act, the Department will take into account five

[8] *See* AR6 Factual Information Memo at Attachment 2, page 6.

[9] *Id.*

[10] The United States International Trade Commission also noted that innerspring coils and border rods are major components of an innerspring unit. *See Uncovered Innerspring Units from South Africa and Vietnam,* USITC Pub. 4051, Inv. Nos. 731–TA–1141–1142 at I–11 (December 2008) (hereinafter, ''*USITC Uncovered Innersprings Report*''). In its final determination regarding imports of uncovered innersprings from the PRC, the Commission adopted the findings and analyses in its determinations and views regarding subject imports from South Africa and Vietnam with respect to the domestic like product, the domestic industry, cumulation, and material injury. *Uncovered Innerspring Units from China,* USITC Pub. 4061, Inv. No. 731–TA–1140 at 3 and I–1 (February 2009).

[11] *See* AR6 Factual Information Memo at Attachment 2, pages 6–8 and Exhibit 1, and Attachment 1, at page 10; *see also AR6 Final Results,* and accompanying Issues and Decision Memorandum at 6–9.

factors to determine whether the process of assembly or completion of merchandise in a foreign country is minor or insignificant. An examination of these factors indicates that Macao Commercial's process of assembly and completion of innerspring units in Macau is likely not significant.

(1) Level of Investment in Macau

The level of investment to assemble innerspring components into innerspring units appears to be limited. In initiating a prior circumvention inquiry under the *Order,* we cited evidence that the process employed to assemble innerspring components into innerspring units is relatively simple and requires only limited investment and labor. Petitioner explained that the start-up investment costs and the barriers to entry into manual and semi-automatic assembly operation are low.[12] In particular, Petitioner provided evidence that in the most basic, fully-manual operation, coils are assembled manually using a wooden or steel jig in which the coils (continuous or bonnell) [13] are hand-loaded, then hand-laced with helical wire and finished by clipping the border rods to the unit.[14] Petitioner estimated that the cost of a new wooden (or steel) jig is approximately $200–$400.[15] The information provided by Petitioner in that inquiry indicated that the level of investment would also be low for companies that rely on a semi-automated assembly operation where a machine is used to assemble the rows of coils. Macao Commercial's production process does not appear to be markedly different than the assembly operations described above.[16]

(2) Level of Research and Development in Macau

In the sixth administrative review, there was no evidence of Macao Commercial performing any research and development related to the assembly and/or production of innerspring units. Moreover, we would not expect Macao Commercial to incur significant (if any) research and development expenses related to its innerspring assembly operations, given that in a prior circumvention inquiry, the respondent affirmatively stated that innerspring units are a ''mature'' product and that its research and development activities were limited to ''trial and error'' type manufacturing improvements.[17] The Department found this level of research and development to be minor, and did not change this finding in the final determination.[18]

(3) Nature of the Production Process in Macau

In the sixth administrative review, Macao Commercial indicated that its manufacturing process for assembling innerspring units from imported components appears to be relatively simple and does not require significant start-up costs, sophisticated machinery and inputs, or substantial labor.[19] This process, as described by Macao Commercial, is similar to the process found to be insignificant by the Department in a prior circumvention inquiry under this *Order.*[20]

(4) Extent of Production Facilities in Macau

In initiating a prior circumvention inquiry under this *Order,* we relied upon evidence that the company in question had one production facility with only six to seven workers involved in assembly of innersprings units, with another one or two workers devoted to packing.[21] Macao Commercial's information from the sixth administrative review shows that its production facilities are similarly limited in nature. It has one modestly-sized facility devoted to the assembly and packing of innersprings, the production machinery required is not extensive,[22] and the amount of labor involved appears minimal.[23]

(5) Value of Processing in Macau as Compared to Uncovered Innerspring Units Imported Into the United States

We do not have information showing whether the value of assembling the innerspring components into finished units by Macao Commercial represents a small portion of the total value of the unit imported into the United States. Nonetheless, in initiating a prior circumvention inquiry under this *Order,* we cited evidence provided by the Petitioner that the value of assembly processing performed in another third country (Malaysia) likely represented a small portion of the total value of the innerspring units imported into the United States.[24] We find that this information is relevant here. This information indicates that similar assembly operations in Macau would likely represent an insignificant portion of the total value.

D. Value of Merchandise Produced in the PRC

In initiating a prior circumvention inquiry under this *Order,* we cited evidence that the value of the components that the respondent imported from the PRC for further assembly in Malaysia into subject merchandise was a significant portion of the total value of the innerspring units exported to the United States.[25] As noted previously, innerspring coils, helical wires, and border rods are key components of an innerspring unit. Petitioner explained that these components also constitute a significant portion of the overall costs of an innerspring unit.[26] Because Petitioner did not have access to other PRC innerspring unit producer/exporter costs, it conducted an analysis related to the production costs of various

[12] *See Uncovered Innerspring Units From the People's Republic of China: Initiation of Anticircumvention Inquiry on Antidumping Duty Order,* 79 FR 78792 (December 31, 2014) (*Goldon Initiation*) and Memorandum to the File ''Factual Information from the Goldon Circumvention Inquiry,'' dated concurrently with this initiation notice (Goldon Factual Information Memo), at Attachment at page 10.

[13] Bonnell coils, the most commonly used type of coils in innerspring units, have an hour-glass shape which tapers inward from top to center and then outward from the center to bottom. Bonnell coils are generally the lowest priced units and the type of coil generally used in imported innerspring units. Continuous coils have entire rows of continuous coils formed from a single piece of wire. For a more detailed description of the types of innerspring coils, *see USITC Uncovered Innersprings Report* at I–8 to I–10.

[14] *See* Goldon Factual Information Memo at Attachment at pages 10–11. A somewhat more advanced assembly operation may involve manual assembly using a wooden or steel jig in which the coils are hand-set, and a lacing machine is used to feed the helical to join the rows, and then the borders are manually clipped to the unit. *Id.*

[15] *Id.*

[16] *See* AR6 Factual Information Memo at Attachment 2, Exhibit 1.

[17] *See Uncovered Innerspring Units From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 78 FR 41784 (July 11, 2013), and accompanying Preliminary Decision Memorandum at 6.

[18] *See Uncovered Innerspring Units From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 79 FR 3345 (January 21, 2014), and accompanying Issues and Decision Memorandum (*Reztec Final Determination*).

[19] *See* AR6 Factual Information Memo at Attachment 2, Exhibit 1.

[20] *See Uncovered Innerspring Units From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 78 FR 41784 (*Goldon Prelim*), and accompanying Preliminary Decision Memorandum (unchanged in final).

[21] *See Goldon Initiation.*

[22] *See* AR6 Factual Information Memo at Attachment 2, Exhibit 1.

[23] *See* AR6 Factual Information Memo at Attachment 1, Exhibit 3 (Macao Commercial's financial statement showing a minimal amount of direct labor expenses).

[24] *See Goldon Initiation* and Goldon Factual Information Memo Attachment at pages 12–13.

[25] Goldon Factual Information Memo Attachment at 14–15.

[26] *Id.*

innerspring unit models at its own facility in Guangzhou, PRC. Petitioner believed that its operation (and costs) in the PRC are representative of the operations (and costs) of other PRC innerspring unit producers/exporters, as it is the largest producer of innersprings in the PRC.[27] According to Petitioner's analysis of its own production costs in the PRC, the total value of these innerspring components compose a significant portion of the total value of an innerspring unit.[28] Similarly, based on the limited information available from the sixth administrative review, we find that the value of production in the PRC appears to comprise a significant portion of the value of Macao Commercial's innersprings units.[29]

E. Additional Factors for Consideration

Section 781(b)(3) of the Act directs the Department to consider additional factors in determining whether to include merchandise assembled or completed in a foreign country within the scope of the *Order.*

(1) Pattern of Trade

Macao Commercial stated that it expressly set up the flow of trade of innerspring components from the PRC in order to make Macau the country of origin for shipment to countries with antidumping duty orders.[30] Additionally, data from the United States International Trade Commission DataWeb show a significant increase of U.S. imports of innerspring units from Macau since the imposition of the *Order.*[31]

(2) Affiliation

Macao Commercial is affiliated with a producer of subject merchandise in the PRC and is also affiliated with other Macanese companies involved in the innersprings industry.[32] Generally, the Department considers circumvention to be more likely to occur when the manufacturer of the PRC-origin merchandise is related to the third country assembler and is a critical element in our evaluation of circumvention.[33]

(3) Increase of Subject Imports From the PRC to Macau After the Investigation Initiation

We did not examine any evidence regarding an increase in subject imports (*i.e.,* completed uncovered innerspring units) from the PRC to Macau after the initiation of the investigation. Further, Macao Commercial stated in the sixth administrative review that it does not transship PRC-origin innerspring units to the United States.[34] Nonetheless, this factor does not appear particularly relevant in a completion/assembly in a third country circumvention inquiry because the issue is not subject imports from the PRC to Macau, but rather parts for assembly.[35]

F. Whether Action Is Appropriate To Prevent Evasion of the Order

Based on the factual information placed on the record concurrently with this initiation, and for the reasons provided in the analysis above, pursuant to section 781(b)(1)(E) of the Act, the Department determines that initiating an anticircumvention inquiry is appropriate to identify any potential evasion of the *Order.*

Analysis of the Request

Based on our analysis of the record information from prior segments placed on the record concurrently with this initiation, and our prior circumvention findings under this *Order,* the Department determines that this self-initiation of an anticircumvention inquiry is warranted. Pursuant to 19 CFR 351.225(b), the Department will notify by mail all parties on the Department's scope service list of the initiation of an anticircumvention inquiry.

In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties on the merchandise. This circumvention inquiry covers Macao Commercial. If, within sufficient time, the Department receives a formal request from an interested party regarding potential circumvention of the *Order* by other Macanese companies, or if the Department determines from available information that an inquiry is warranted with respect to other Macanese companies, we will consider conducting additional inquiries concurrently.

The Department will establish a schedule for questionnaires and comments on the issues. In accordance with 19 CFR 351.225(f)(5) and section 781(f) of the Act, unless extended, the Department intends to issue its final determination within 300 days of the date of publication of this initiation. This notice is published in accordance 19 CFR 351.225(f).

Dated: November 16, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–28087 Filed 11–21–16; 8:45 am]

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[27] *Id.* at 14–15 and Exhibit 6.

[28] *Id.*

[29] *See* AR6 Factual Information Memo at Attachment 1, Exhibit 3.

[30] *See* AR6 Factual Information Memo at Attachment 1, page 3.

[31] *See* Memorandum to the File ''Innerspring Units Import Data,'' dated concurrently with this initiation notice.

[32] *See* AR6 Factual Information Memo at Attachments 1 and 2.

[33] *See Goldon Prelim,* and accompanying Preliminary Decision Memorandum at ''Affiliation.''

[34] *See* AR6 Factual Information Memo at Attachment 3, page 2.

[35] *See, e.g., Goldon Initiation.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–008]

Calcium Hypochlorite From the People's Republic of China: Final Decision To Rescind the New Shipper Review of Haixing Jingmei Chemical Products Sales Co., Ltd.

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 27, 2016, the Department of Commerce (the ''Department'') published its *Preliminary Rescission* for the new shipper review (''NSR'') of the antidumping duty order on calcium hypochlorite from the People's Republic of China (''PRC''). The period of review is July 25, 2014 through June 30, 2015. As discussed below, we preliminarily determined to rescind this review because we requested but were not provided sufficient information to conduct a *bona fide* analysis as required by the statute, and accordingly cannot determine whether the new shipper sales of Haixing Jingmei Chemical Products Sales Co., Ltd. (''Jingmei'') are *bona fide.* Based on our analysis of the comments received, we make no changes to the *Preliminary Rescission.* Accordingly, we have determined to rescind this NSR with respect to Jingmei.

DATES: Effective November 22, 2016.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta or Amanda Brings, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2593 or (202) 482–3927, respectively.

SUPPLEMENTARY INFORMATION:

Background

For a complete description of the events that followed the publication of the *Preliminary Rescission,*[1] see the Issues and Decision Memorandum.[2] 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 in the Department's Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Scope of the Order

The merchandise covered by the Order is calcium hypochlorite, regardless of form (*e.g.,* powder, tablet (compressed), crystalline (granular), or in liquid solution), whether or not blended with other materials, containing at least 10% available chlorine measured by actual weight. Calcium hypochlorite is currently classifiable under the subheading 2828.10.0000 of the Harmonized Tariff Schedule of the United States.[3]

Analysis of Comments Received

All issues raised in the case briefs by parties are addressed in the Issues and Decision Memorandum.[4] A list of the issues which parties raised is attached to this notice as an Appendix.

Final Rescission of Jingmei New Shipper Review

In the *Preliminary Rescission,* we preliminarily determined to rescind this review because we requested but were not provided sufficient information to conduct a *bona fide* analysis as required by the statute, and accordingly cannot determine whether the new shipper sales of Jingmei are *bona fide.* Based on the Department's complete analysis of all of the information and comments on the record of this review, we make no changes to the *Preliminary Rescission.* Accordingly, we have determined to rescind this NSR with respect to Jingmei. For a complete discussion, see the Preliminary *Bona Fide* Memo[5] and the Issues and Decision Memorandum.

Assessment

As the Department is rescinding this NSR, we have not calculated a company-specific dumping margin for Jingmei.

Cash Deposit Requirements

Effective upon publication of this notice of the final rescission of the NSR of Jingmei, the Department will instruct U.S. Customs and Border Protection to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise from Jingmei. Because we did not calculate a dumping margin for Jingmei, Jingmei continues to be part of the PRC-wide entity. The cash deposit rate for the PRC-wide entity is 200.90 percent.[6] The current cash deposit requirements shall remain in effect until further notice.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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.

The Department is issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.214 and 19 CFR 351.221(b)(5).

Dated: November 14, 2016.

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 Order
IV. Discussion of the Issues
  Comment 1: Whether the Department Should Have Conducted a *Bona Fide* Analysis
  Comment 2: Whether the Department has ''Penalized'' Jingmei for Its Unaffiliated Customers' Partial Cooperation
V. Recommendation

[FR Doc. 2016–28103 Filed 11–21–16; 8:45 am]

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[1] *See Calcium Hypochlorite From the People's Republic of China: Preliminary Intent to Rescind the New Shipper Review of Haixing Jingmei Chemical Products Sales Co., Ltd.,* 81 FR 41522 (June 27, 2016) (''*Preliminary Rescission*'').

[2] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Issues and Decision Memorandum for the Final Rescission of the Antidumping Duty New Shipper Review of Calcium Hypochlorite From the People's Republic of China: Haixing Jingmei Chemical Products Sales Co., Ltd.'' dated concurrently with and hereby adopted by this notice (''Issues and Decision Memorandum'').

[3] For a complete description of the scope of the Order, *see* the Issues and Decision Memorandum.

[4] *See* Issues and Decision Memorandum.

[5] *See* Memorandum to James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, through Catherine Bertrand, Program Manager, Office V, Antidumping and Countervailing Duty Operations, from Kabir Archuletta, Senior International Trade Analyst, ''*Bona Fide* Nature of the Sales in the Antidumping Duty New Shipper Review of Calcium Hypochlorite From the People's Republic of China: Haixing Jingmei Chemical Products Sales Co., Ltd.,'' dated June 20, 2016 (''Preliminary *Bona Fide* Memo'').

[6] *See Calcium Hypochlorite From the People's Republic of China: Antidumping Duty Order,* 80 FR 5085 (January 30, 2015).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC644

Marine Mammals; File No. 18016

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that Tamara McGuire, LGL Alaska Research Associates, Inc., 2000 W International Airport Rd, Suite C1, Anchorage, AK 99502, has applied for an amendment to Scientific Research Permit No. 18016.

DATES: Written, telefaxed, or email comments must be received on or before December 22, 2016.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 18016 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at

the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Sara Young, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 18016 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 18016, issued on May 29, 2014 (79 FR 41991), authorizes the permit holder to conduct vessel surveys in Cook Inlet, Alaska for photo-identification and observations of Cook Inlet beluga whales (*Delphinapterus leucas*). The purpose of the research is to identify individual whales and to provide information about movement patterns, habitat use, survivorship, reproduction, and population size. The permit holder is requesting the permit be amended to increase the number of whales that may be approached during surveys from 72 to 340 whales annually. Animals may be taken up to 10 times per year during surveys. The amendment is needed to increase the effectiveness of photo-identification studies and to decrease the total time spent operating the survey boat around whales. No other details of the permit would change.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 16, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–28022 Filed 11–21–16; 8:45 am]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No.: CFPB–2016–0048]

Request for Information Regarding Consumer Access to Financial Records

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides for consumer rights to access financial account and account-related data in usable electronic form. The Bureau of Consumer Financial Protection (Bureau or CFPB) is seeking comments from the public about consumer access to such information, including access by entities acting with consumer permission, in connection with the provision of products or services that make use of that information. Submissions to this Request for Information will assist market participants and policymakers to develop practices and procedures that enable consumers to realize the benefits associated with safe access to their financial records, assess necessary consumer protections and safeguards, and spur innovation.

DATES: Comments must be received on or before February 21, 2017.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2016–0048, by any of the following methods:

- *Electronic:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2016–0048 in the subject line of the message.
- *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: Please note the number associated with any question to which you are responding at the top of each response (you are not required to answer all questions to receive consideration of your comments). The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. 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 standard time. You can make an appointment to inspect the documents by telephoning 202–435–7275.

All submissions, 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, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions or any additional information, please contact Monica Jackson, Office of the Executive Secretary, at 202–435–7275.

Authority: 12 U.S.C. 5511(c); 12 U.S.C. 5512(c).

SUPPLEMENTARY INFORMATION: The Bureau is seeking public comment through this Request for Information (RFI) to better understand the consumer benefits and risks associated with market developments that rely on access to consumer financial account and account-related information. This RFI generally refers to such information as ''consumer financial account data.'' [1] It further refers to consumer access to such information, including access by entities acting with consumer permission, as ''consumer-permissioned'' access. The RFI also labels account information that is obtained via consumer-permissioned access as ''consumer-permissioned account data.''

[1] The RFI sometimes distinguishes ''consumer financial account data'' from ''non-financial'' consumer account data, the latter being held by companies that offer consumers non-financial products and services. The RFI uses the term ''consumer account data'' to refer collectively to both kinds of consumer account data, financial and non-financial.

The information obtained in response to this RFI may help industry develop best practices to deliver benefits to consumers and address potential consumer harms. It may also help the Bureau in prioritizing resources. For example, the Bureau may use the information obtained to evaluate whether any guidance or other action by the Bureau is called for, including future rulemaking.

The Bureau encourages comments from all members of the public. The Bureau anticipates that the responding public may encompass the following groups, some of which may overlap in part:

- Individual consumers;
- Consumer and civil rights groups;
- Privacy advocates;
- Consumer financial product and service providers that control or possess data about consumer use of their products and services (for purposes of this RFI, ''consumer financial account providers'');
- Consumer financial product and service providers that rely, at least in part, on consumer-permissioned access to consumer financial account data (for purposes of this RFI, ''consumer-permissioned providers'' or ''permissioned parties'');[2]
- Entities that obtain consumer financial account data directly from consumer financial account providers for consumer-permissioned providers (for purposes of this RFI, ''account aggregators'');
- Consumer reporting agencies;
- Data brokers, processors and platform providers;
- Regulators;
- Providers of non-financial consumer products and services that may have knowledge of or experience in the use of consumer-permissioned account data to provide products and services to consumers;
- Participants in non-U.S. consumer markets with knowledge of or experience in the use of consumer-permissioned account data to provide products and services to consumers; and
- Any other interested parties.

Part A: Regulatory Framework Applicable to Consumer-Permissioned Access to Account Information

General Background

In the Dodd-Frank Act, Congress instructed the Bureau to implement and enforce consumer financial law ''for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.''[3] Congress further instructed the Bureau to exercise its authorities so that ''markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.''[4]

The Bureau has jurisdiction with respect to a number of Federal statutes and regulations that establish rights and protections related to consumer financial account-related information. These well-established statutory and regulatory frameworks cover a broad range of entities, including traditional providers of consumer financial products and services and newer entrants. In some cases, they may cover service providers to such entities as well.

Many of these frameworks impose requirements that consumer financial account providers disclose certain information to their customers about their accounts. Disclosure requirements may include, for example, periodic statements with account information on transactions and fees or disclosures about the collection, sharing, use, and protection of consumers' non-public personal information.[5] A consumer also has the right to access information about himself or herself held by certain entities, such as information in a consumer reporting agency's file on the consumer.[6]

These and other legal frameworks also establish substantive consumer protections with respect to certain types of consumer information. Such protections include limitations on the use of such information, limitations on the disclosure of such information to third parties, and requirements relating to the security of such information.[7] Other protections include limitations on consumer liability if a consumer's information is lost or stolen and the consumer suffers a loss from unauthorized use or an erroneous electronic debit.[8] The Bureau also has authority under Title X to take action to prevent covered persons and service providers from committing or engaging in unfair, deceptive, or abusive acts or practices (UDAAPs). An entity's consumer data privacy or security practices can violate UDAAP standards.[9]

Consumer-Permissioned Access to Consumer Financial Account Information

In the context of this existing statutory and regulatory landscape, section 1033 of the Dodd-Frank Act provides for consumer rights to access information.[10] More specifically, section 1033 requires that ''[s]ubject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, information in the control or possession of such person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, or series of transactions, to the account including costs, charges,

[2] For purposes of this RFI, consumer-permissioned providers are *third-party* providers. Thus, consumer financial account providers do not themselves count as consumer-permissioned providers by virtue of using the account data that they already hold to deliver additional services to customers.

[3] 12 U.S.C. 5511(a).

[4] 12 U.S.C. 5511(b)(5).

[5] *See, e.g.,* Regulation Z, 12 CFR 1026.5(b)(2) and 1026.7(b) (implementing the Truth in Lending Act with respect to periodic statements for credit cards); Regulation E, 12 CFR 1005.9(b) (implementing the Electronic Fund Transfer Act with respect to periodic statements for traditional bank accounts and other consumer asset accounts); Regulation DD, 12 CFR 1030.6(a)(3) (implementing the Truth in Saving Act with respect to periodic statements for deposit accounts held at depository institutions); Gramm-Leach Bliley Act, 15 U.S.C. 6803, and its implementing regulations. Further, on October 5, 2016, the Bureau issued a final rule amending Regulations E and Z for prepaid accounts. For prepaid accounts, the final rule provides that as an alternative to providing the periodic statement, a financial institution must, among other things, make an electronic history of a consumer's account transactions available to the consumer that covers at least 12 months preceding the date the consumer electronically accesses the account. The requirement will become effective on October 1, 2017.

[6] Fair Credit Reporting Act, 15 U.S.C. 1681g(a).

[7] *See, e.g.,* Fair Credit Reporting Act, 15 U.S.C. 1681 through 1681x, Gramm-Leach-Bliley Act, 15 U.S.C. 6801 through 6809, and their implementing regulations.

[8] TILA, as implemented by Regulation Z, protects credit card consumers from unauthorized credit card use. *See* TILA section 133; 15 U.S.C. 1643; 12 CFR 1026.12(b). EFTA, as implemented by Regulation E, does the same with respect to EFTs. *See* EFTA section 909(a); 15 U.S.C. 1693g(a); 12 CFR 1005.6(b)(2).

[9] In March 2016 the Bureau entered into a consent order with a provider of a consumer-facing, online payment network. Among other things, the Bureau found that the entity falsely represented to consumers that it employed reasonable and appropriate measures to protect data obtained from consumers from unauthorized access. (*See http://files.consumerfinance.gov/f/201603_cfpb_consent-order-dwolla-inc.pdf.*) Relying on section 5 of the Federal Trade Commission Act, which makes unlawful all ''unfair or deceptive acts or practices in or affecting commerce,'' *see* 15 U.S.C. 45(a)(1), the FTC has also taken action against companies that fail to take reasonable measures to protect the security of consumer data. *See, e.g.,* FTC Matter/File Numbers 1023142–X120032 (Wyndham Worldwide Corporation); 052–3148 (CardSystems Solutions, Inc.); 052–3136 (Superior Mortgage Corp.); 052–3096 (DSW Inc.); 052–3117 (Nations Title Agency, Inc.); 062–3057 (Guidance Software, Inc.); 072–3046 (Life is good, Inc.); 072–3055 (TJX Companies); and 052–3094 (Reed Elsevier, Inc.).

[10] 12 U.S.C. 5533.

and usage data.'' [11] Section 1033 further provides that the information must be in an electronic form usable by the consumer, although it does not impose any duty to maintain or keep any information about a consumer. Additionally, section 1033 applies only to information that the consumer financial account data holder can ''retrieve in the ordinary course of its business with respect to that information.'' [12]

Part B: Current Market Practices in Connection With Consumer-Permissioned Access to Account Information

General Market Practice

In recent years, the availability of consumer financial account data in electronic form, often in real-time or near-real-time, has made possible a range of benefits to consumers. When made readily available, such data foster consumer convenience, and they can help consumers understand and control their financial lives, make useful decisions, monitor spending and debt, set and achieve savings goals, communicate effectively with their financial service providers, and solve financial problems in timely ways.[13]

Many providers of consumer financial products and services, from traditional providers like banks and credit unions to newer entrants such as online lenders, make available to consumers extensive electronic data about their accounts at that firm. Many consumers, however, maintain accounts with several financial service providers. As a result, by the late 1990s, market participants began to offer consumers services that depended, at least in part, on broader, consumer-permissioned access to data across a consumer's financial accounts—sometimes combined with other information about the consumer. Traditional account providers like banks have been the predominant users of such consumer account data. By obtaining data about the consumers' other accounts, banks and other traditional market participants have been able to supplement their use of existing in-house data for online advisory and account management services.[14] Over time, however, newer entrants have also begun to provide products and services to consumers using consumer-permissioned, electronically-sourced account data.[15]

Some consumer-permissioned providers have used their own proprietary technology solutions to access data from consumer financial account providers. However, given the large number of potential data sources and the transaction costs associated with obtaining consumer account data (sometimes on a recurring basis), other providers have relied on third-party ''account aggregators'' to provide the necessary technology. (Some entities have provided both account aggregation services to third parties and direct services to consumers using permissioned data.) In either case, the process of accessing consumer account data is often referred to as account or data aggregation.[16]

Technology advances have facilitated the development of aggregation services and the associated delivery of products and services that rely on consumer account data access. The Bureau understands that methods to access consumer account data—and to obtain consumer permission to do so—are technically complex and actively evolving. To enable access, consumers are often prompted to provide their online account credentials, including user name and password, and other forms of authentication such as knowledge-based security questions. Depending on the product or service, consumers may be asked to permit access only to a single account with an individual company or financial institution, or to multiple accounts held by a number of financial institutions and other companies.

Typically, consumers provide their account credentials for a particular company or financial institution where they hold an account. Those credentials are then used to obtain their account data through either: (1) A structured data feed or an application program interface (API) hosted by the company or financial institution, or (2) the company or financial institution's consumer-facing Web site in a process known as screen-scraping.[17] If an account aggregator is an intermediary in this process, it will generally transmit the consumer's data to permissioned parties through an API. The Bureau understands that account aggregators, as well as product and service providers that use consumer-permissioned data, sometimes store consumer account data for a range of uses, including those discussed further below. In addition, they sometimes obtain updated consumer account data on a recurring basis.

Consumer Benefits From Specific Market Uses

The Bureau is aware of a number of types of products and services provided to consumers that make use of consumer financial account data on a consumer-permissioned basis, including the following:

- *Personal financial management:* Many personal financial management (PFM) tools allow consumers to view their account information from many accounts and financial service providers in a single, consolidated view.
- *Automatic or motivational savings:* Some companies provide automatic savings mechanisms for consumers to choose as well as messages to encourage savings. These companies may use algorithms that rely on permissioned account data to determine how much a consumer can afford to save or, at the transaction level, to ''round-up'' transaction amounts to the next dollar and save the remainder.
- *Budgeting analysis and advice:* Many providers allow consumers to set budgets and analyze their spending activity based on the classification of transaction data into categories like entertainment, food, and health care. Some services send a mobile or email notification when a consumer is over-budget or close to being over-budget. Consumers may be provided with other budgetary advice based on analysis of their transaction data, including comparisons with peer groups.

[11] 12 U.S.C. 5533(a). The Dodd-Frank Act defines ''covered person'' in detail at 12 U.S.C. 5481(6). The Act defines a ''consumer'' as ''an individual or an agent, trustee, or representative acting on behalf of an individual.'' 12 U.S.C. 5481(4).

[12] *See id.,* 5533(c), & 5533(b)(4). Section 1033 contains a number of other exceptions. *See* 5533(b)(1)–(3). In addition, it requires the Bureau to prescribe standards to promote the development and use of standardized formats for information to be made available to consumers, including through the use of machine readable files. *See* 5533(d).

[13] *See, e.g.,* Aite Group, *Personal Financial Management: A Platform for Customer Engagement* (Feb. 24, 2010).

[14] As far back as 2001, the Office of the Comptroller of the Currency (OCC) issued guidance to depository institutions under its supervision about using third parties to provide data aggregation services. *See* Office of the Comptroller of Currency, OCC Bulletin 2001–12, *Bank-Provided Account Aggregation* Services (February 28, 2001), *available at https://www.occ.gov/news-issuances/bulletins/2001/bulletin-2001-12.html#.*

[15] *See, e.g., https://www.mint.com/terms* (''The Mint Service is a personal finance information management service that allows you to consolidate and track your financial information. The Mint Service is provided to you by Intuit without charge[.]'') Intuit is Mint's parent company.

[16] This RFI generally uses the terms ''account aggregation'' or ''aggregation.''

[17] For example, Yodlee, an account aggregator, reports that 75 percent of the data it aggregates from over 14,500 sources is collected through structured feeds from its financial institution customers and other financial institutions. *See* Envestnet, 2015 Annual Report, at 14 (Feb. 29, 2016), *available at http://ir.envestnet.com/phoenix.zhtml?c=235783&p=irol-IRHome.* Yodlee was an independent company until it was acquired by Envestnet in 2015.

• *Product recommendations:* Some advisors or providers may make product recommendations based on consumer financial account data. For example, if checking account data show the consumer incurring ATM fees, a provider might recommend other checking accounts with lower or no ATM fees.

• *Account verification:* Many consumer financial and non-financial products and services require consumers to verify their identity and bank account information. Account aggregation technology may be used for near-instant verification of account ownership. When used in this manner, such technology eliminates any need for the consumer to enter their account and routing number, a manual process that carries the possibility of typographical error. Account aggregation technology used for verification purposes can also eliminate the use of ''micro-deposits,'' which is a verification method that can take significantly longer to confirm account ownership.

• *Loan application information verification:* Some lenders may access consumer financial account data, such as the account's deposit history, to verify income and other stated loan application data. Aggregation can make this kind of verification process more efficient and more reliable.

• *Credit decisioning:* Some lenders may be using or considering using consumer or small business owner account data for underwriting or credit scoring purposes.

• *Cash flow management:* Some third-party providers notify consumers when transactions occur, when funds clear, or when an account balance approaches or dips below zero. These alerts can help consumers manage their cash flow and, in some cases, transfer money into their account to avoid NSF and overdraft fees.

• *Funds transfer and bill payment:* Some providers may obtain consumer authorizations to transfer funds for other purposes, such as timely bill payment or automatic transfers to retirement plans, and use information based on consumer financial account data to inform decisions about the transfer, such as its size and timing. Some companies also receive available funds data to verify account balances before initiating an account debit. Using that data they can avoid debiting an account that has insufficient funds and triggering NSF or overdraft fees for the consumer. In addition, some providers may retrieve bill information for consumers and allow the consumer to pay their bills, a process sometimes known as EBPP (for electronic bill presentment and payment).

• *Fraud and identity theft detection:* Some service providers may analyze consumer transactions across various financial accounts to identify and alert consumers to potential fraudulent or erroneous transactions.

• *Investment management and other non-consumer business services:* Some product and service providers rely on consumer financial account data to provide individuals with investment management services. In a similar manner, non-consumer data (such as data from a small business's checking account) may be used to provide accounting and expense management services to small business owners, their investors, or lenders.

Current Market Issues and Risks

Market developments to date speak to the consumer benefits associated with consumer-permissioned account data access. However, such access may also present risks to market participants, including consumers. Public discussion of access to consumer financial account data has focused significant attention on data security and privacy issues.[18] In particular, some consumer financial account providers have raised concerns about whether account aggregators or permissioned parties employ adequate security and privacy procedures with respect to consumers' online account credentials and consumer account data obtained through aggregation.[19]

Privacy and security concerns have also been raised about whether account aggregators and permissioned parties obtain or retain more consumer information than is necessary for the specific product or service being provided, as well as the extent to which—and terms under which—they may use the data for purposes other than providing the requested product and service and may make data available to other entities.[20] A number of parties have also raised concerns about the application of the Fair Credit Reporting Act in this area.[21] In addition, some consumer financial account providers have expressed concern about their liability for unauthorized transactions that may result from a breach of consumer credentials or consumer financial account data held by an account aggregator or a permissioned party.[22] The Bureau understands that discussions among market participants surrounding these and other security and privacy-related issues are ongoing.

The Bureau also understands that market participants, including financial institutions that provide consumer deposit and other financial accounts, non-financial providers of consumer products and services, account aggregators, and permissioned parties continue to address their working arrangements, often bilaterally, with respect to consumer account data. Those efforts encompass the sharing of technical burdens, the frequency and volume of data provision, counterparty vetting, consumer protection obligations (particularly in the event of a data breach), compensation and indemnity arrangements, and other concerns. The Bureau believes, however, that such market participants do not necessarily share common views about consumer protection and other consumer interests.

More fundamental still, the Bureau does not believe that consumer views have been adequately represented in this area. The Bureau is concerned, therefore, that some market participants may decide to restrict consumer-permissioned access to data in ways that undermine consumer interests identified in section 1033—and that are broader than necessary to address legitimate privacy and security concerns.

[18] In a different context, commenters have told the Bureau that such concerns—what data will be retrieved, how securely it will be stored, and with whom it will be shared—may cause consumers not to adopt new, potentially beneficial products and services. *See* Consumer Financial Protection Bureau, *Report on Mobile Financial Services,* at 54–64 (November 2015) (listing ''security'' and ''privacy'' as the top two challenges or risks to adoption of mobile financial services by the underserved), *available at http://files.consumerfinance.gov/f/201511_cfpb_mobile-financial-services.pdf.*

[19] *See* Peter Rudegeair, *J.P. Morgan Warns It Could Unplug Quicken and Quickbooks Users,* Wall St. J. (Nov. 24, 2015), *available at http://www.wsj.com/articles/j-p-morgan-may-unplug-some-customers-access-to-account-data-1448375950?alg=y.*

[20] *See, e.g.,* Bradley Hope, *Provider of Personal Finance Tools Tracks Bank Cards, Sells Data to Investors,* Wall St. J. (Aug. 6, 2015) (reporting that Yodlee sells some of the data it collects to investment firms but that Yodlee has not publicly disclosed that it does so, and that Yodlee has stated that individuals' identities cannot be discerned from its data set), *available at http://www.wsj.com/articles/provider-of-personal-finance-tools-tracks-bank-cards-sells-data-to-investors-1438914620.*

[21] *See, e.g.,* Federal Reserve Bank of Philadelphia, Compliance Corner (Q4 2001), *On-line Aggregation: Benefits and Risks,* at CC4, *available at https://www.philadelphiafed.org/bank-resources/publications/compliance-corner/2001/q4cc_01.pdf.*

[22] *See, e.g.,* Jamie Dimon, *Letter to Shareholders,* at 21 (April 6, 2016) (expressing ''extreme concern'' over, among other things, data security and privacy, because customers have let aggregators access their bank accounts and account information); *see also,* Robin Sidel, *Big Banks Lock Horns with Personal-Finance Web Portals,* Wall St. J., Nov. 4, 2015, *available at http://www.wsj.com/articles/big-banks-lock-horns-with-personal-finance-web-portals-1446683450.*

Part C: Questions Related to Consumer-Permissioned Access to Account Information

This request for information is intended to cover practices—and potential practices—concerning consumer-permissioned access to consumer financial account data. The Bureau is interested in learning more about how consumer products and services may rely on such data, regardless of whether the products or services that make use of such data are technically ''consumer financial'' products or services, or whether such products also rely on consumer-permissioned data from non-financial accounts or on data from other sources. So long as submissions shed light on the use of consumer-permissioned access to consumer financial account data, they will be responsive. Except where specifically noted, therefore, these questions use consumer ''products'' and ''services'' to refer to consumer products or services that are financial or non-financial, *but that rely at least in part on consumer-permissioned access to consumer financial account data.*

Questions 1 through 17 below seek information about current market practices. Questions 18 through 20 enable commenters to describe how they believe market practices may or should change over time. Questions use ''consumer-permissioned access'' to cover direct access by the consumer upon request and access by the consumer's permissioned designees, but, where they deem it appropriate, respondents may provide different answers for these two forms of consumer access.

Current Practices

1. What types of products and services are currently made available to consumers that rely, at least in part, on consumer-permissioned electronic access to consumer financial account data? What benefits do consumers realize as a result? This question covers the use of such data to deliver products or services or to assess eligibility for a given product or service.

2. How many consumers are using or seeking to use such products or services? What demographic or other aggregate information is available about these consumers?

3. To provide or assess eligibility for these products and services, what kinds of consumer *financial* account data are being accessed, by what means, under what terms, and how often? How long is accessed data stored by permissioned parties or account aggregators?

4. To provide or assess eligibility for these products and services, what kinds of *non-financial* consumer account data are being accessed by parties that also access consumer financial account data? By what means, under what terms, and how often? How long is accessed data stored by permissioned parties or account aggregators?

5. What types of companies offer products and services that rely, at least in part, on consumer-permissioned electronic access to consumer financial account data, either to deliver the product or service or to assess eligibility for the product or service? To what extent are such products and services offered by entities that offer transaction accounts? To what extent are they offered by other market participants?

6. In what ways, if any, do consumer products and services that rely, at least in part, on consumer-permissioned electronic access to consumer financial account data differ according to whether the offering company provides or does not provide transaction accounts to consumers? Do any such differences impact consumers? If so, how?

7. To what extent do market participants compete to offer consumer products and services that rely, at least in part, on consumer-permissioned access to consumer financial account data? How does such competition impact consumers?

8. What incentives or disincentives exist for consumer financial account providers to facilitate or discourage consumer-permissioned access to the account data that they hold by permissioned parties or account aggregators? In what ways do consumer financial account providers directly or indirectly facilitate or restrict consumer-permissioned access to account data? What are the associated impacts to consumers and other market participants?

9. What impediments, obstacles or risks do consumer financial account providers currently face in providing data to or allowing access to data by permissioned parties or account aggregators? Describe specific operational costs, risks, and actual or potential losses, and identify their specific causes.

10. What impediments, obstacles or risks do permissioned parties or account aggregators currently face in obtaining such data? Describe specific operational costs, risks, and actual or potential losses, and identify their specific causes.

11. What impediments, obstacles or risks do consumers currently face in obtaining—including permitting access to—such data?

12. What security and other risks do consumers incur if they permit access to their financial account data in order to obtain a particular product or service? What steps have consumer financial account providers, account aggregators, permissioned parties and other users of consumer-permissioned account data taken to mitigate such risks? What information do these parties communicate to consumers about associated risks?

13. In what ways, do account aggregators or permissioned parties use consumer-permissioned account data for purposes other than offering or facilitating the delivery of a specific product or service to the permissioning consumer? Do such companies continue to access or store data after the consumer ceases to use the product for which the permissioned data use was intended by the consumer? Do such companies share the data with other parties and, if so, under what terms and conditions? What are the associated impacts to consumers?

14. When consumers permit access to their financial account data, what do they understand about: what data are accessed; how often they are accessed; for what purposes the data are used; whether the permissioned party or account aggregator continues to access, store or use such data after the consumer ceases to use the product or service for which the permissioned data use was intended by the consumer; and with which entities a permissioned party or account aggregator shares the data and on what terms and conditions? What drives or impacts their level of understanding? What impact does their level of understanding have on consumers and on other parties, including on consumers' willingness to permit access?

15. To what extent are consumers able to control how data is used by permissioned parties or account aggregators that obtain that data via consumer-permissioned access? Are consumers able to control what data are accessed, how often they are accessed, for what purposes and for how long the data are used, and with which entities, if any, a permissioned party or account aggregator may share the data and on what terms and conditions? Are they able to request that permissioned parties, account aggregators, or other users delete such data? Is such data otherwise deleted and, if so, when and by what means? To what extent are consumers consenting to permissioned party and account aggregator practices with respect to access, use and sharing of consumer financial account data?

16. Do consumer financial account providers vet account aggregators or permissioned parties before providing

data to them? Do consumer financial account providers perform any ongoing vetting of account aggregators or permissioned parties? If so, for what purposes and using what procedures? What are the associated impacts to consumers and to other parties?

17. What industry standards currently exist, in development or otherwise, to enable consumer-permissioned access to financial account data?

Potential Market Developments

18. What changes are or may be expected to happen to any market practice described in response to questions 1 through 17, why, and with what impacts to consumers, consumer financial account providers, permissioned parties, and account aggregators? Responses to this question may be integrated into responses to questions 1 through 17 if commenters prefer.

19. What changes *should* happen to any market practice described in response to questions 1 through 18, why, and with what impacts to consumers, consumer financial account providers, permissioned parties, and account aggregators? Responses to this question also may be integrated into responses to questions 1 through 17 if commenters prefer.

20. Are ''industry standard'' practices that provide consumers with data access comparable to that envisioned by section 1033 of the Dodd-Frank Act likely to be broadly adopted by consumer financial account providers, permissioned parties and account aggregators in the absence of regulatory action? If not, how will ''industry standard'' practices be insufficient? What marketplace considerations are likely to bear on such developments? Generally, how will the advent of standard practices for consumer-permissioned access to consumer financial account data affect competition and innovation in various consumer financial service markets?

Dated: November 14, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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BUREAU OF CONSUMER FINANCIAL PROTECTION

Supervisory Highlights: Fall 2016

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Supervisory highlights; notice.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB) is issuing its thirteenth edition of its Supervisory Highlights. In this issue of *Supervisory Highlights,* we report examination findings in the areas of auto originations, automobile loan servicing, debt collection, mortgage origination, student loan servicing, and fair lending. As in past editions, this report includes information about a recent public enforcement action that was a result, at least in part, of our supervisory work. The report also includes information on recently released examination procedures and Bureau guidance.

DATES: The Bureau released this edition of the Supervisory Highlights on its Web site on October 31, 2016.

FOR FURTHER INFORMATION CONTACT: Adetola Adenuga, Consumer Financial Protection Analyst, Office of Supervision Policy, 1700 G Street NW., 20552, (202) 435–9373.

SUPPLEMENTARY INFORMATION:

1. Introduction

In this thirteenth edition of *Supervisory Highlights,* the Consumer Financial Protection Bureau (CFPB) shares recent supervisory observations in the areas of automobile loan origination, automobile loan servicing, debt collection, mortgage origination, mortgage servicing, student loan servicing and fair lending. The findings reported here reflect information obtained from supervisory activities completed during the period under review. Corrective actions regarding certain matters remain in process at the time of this report's publication.

CFPB supervisory reviews and examinations typically involve assessing a supervised entity's compliance with Federal consumer financial laws. When Supervision examinations determine that a supervised entity has violated a statute or regulation, Supervision directs the entity to implement appropriate corrective measures, such as refunding moneys, paying of restitution, or taking other remedial actions. Recent supervisory resolutions have resulted in total restitution payments of approximately $11.3 million to more than 225,000 consumers during the review period. Additionally, CFPB's supervisory activities have either led to or supported two recent public enforcement actions, resulting in over $28 million in consumer remediation and an additional $8 million in civil money penalties.

This report highlights supervision-related work generally completed between May 2016 and August 2016 (unless otherwise stated), though some completion dates may vary. Please submit any questions or comments to *CFPB_Supervision@cfpb.gov.*

2. Supervisory Observations

Recent supervisory observations are reported in the areas of automobile loan origination, automobile loan servicing, debt collection, mortgage origination, mortgage servicing and student loan servicing. Worthy of note are the beneficial practices centered on good compliance management systems (CMS) found during the period under review in the areas of automobile loan origination (2.1.1), debt collection (2.3.7), and mortgage origination (2.4.1).

2.1 Automobile Origination

The Bureau's rule defining larger participants in the auto loan market went into effect in August 2015.[1] The consequence was that the Bureau now has supervisory authority over auto lending not only by the largest banks, but also by various other large financial companies. Examinations completed in the period under review focused on assessing CMS and automobile financing practices to determine whether entities are complying with applicable Federal consumer financial laws.

2.1.1 CMS Strengths

During the period under review at one or more entities, examiners determined that the overall CMS of their automobile loan origination business was strong for its size, risk profile, and operational complexity. These institutions effectively identified inherent risks to consumers and managed consumer compliance responsibilities. They maintained: Strong board and management oversight; policies and procedures to address compliance with all applicable Federal consumer financial laws relating to automobile loan origination; current and complete compliance training designed to reinforce policies and procedures; adequate internal controls and monitoring processes with timely corrective actions where appropriate; and processes for appropriately escalating and resolving consumer complaints and analyzing them for root causes, patterns or trends.

These entities also showed strength in their oversight programs for service providers. In particular, they defined processes that outlined the steps to assess due diligence information, and their oversight programs varied commensurate with the risk and

[1] 12 CFR 1090.108.

complexity of the processes or services provided by the relevant service providers.

2.1.2 CMS Deficiencies

Despite improvements at a number of other entities, examiners found that the overall CMS at one or more entities remained weak. These weaknesses included failure to: Create and implement consumer compliance-related policies and procedures; develop and implement compliance training; perform adequate root cause analysis of consumer complaints to address underlying issues identified through complaints; and adequately oversee service providers.

Also, the board of directors and management failed to: Demonstrate clear expectations about compliance; have an adequate compliance audit program; adopt clear policy statements regarding consumer compliance; and ensure that compliance-related issues are raised to the entity's board of directors or other principals.

The relevant financial institutions have undertaken remedial and corrective actions regarding these weaknesses, which are under review by the Bureau.

2.2 Automobile Loan Servicing

The Bureau began supervising nonbank auto loan servicing companies after the rule defining larger participants came into effect in August 2015. In addition to automobile loan originations, the Bureau is examining auto loan servicing activities, primarily assessing whether entities have engaged in unfair, deceptive, or abusive acts or practices prohibited by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[2] As in all applicable markets, Supervision also reviews practices related to furnishing of consumer information to consumer reporting agencies for compliance with the Fair Credit Reporting Act (FCRA) and its implementing regulation, Regulation V. In the Bureau's recent auto servicing examinations, examiners have identified unfair practices relating to repossession fees.

2.2.1 Repossession Fees and Refusal To Return Property

To secure an auto loan, a borrower gives a creditor a security interest in his or her vehicle. When a borrower defaults, the creditor can exercise its right under the contract and repossess the secured vehicle. Depending upon state law and the contract with the consumer, auto loan servicers may in certain cases charge the borrower for the cost of repossessing the vehicle.

Borrowers often have personal property and belongings in vehicles that are repossessed. These items often are not merely incidental, but can be of substantial emotional attachment or practical importance to borrowers, which are not appropriate matters for the creditor to decide for itself. State law typically requires auto loan servicers and repossession companies to maintain borrowers' property so that it may be returned upon request. Some companies charge borrowers for the cost of retaining the property.

In one or more recent exams, Supervision found that companies were holding borrowers' personal belongings and refusing to return the property to borrowers until after the borrower paid a fee for storing the property. If borrowers did not pay the fee before the company was no longer obligated to hold on to the property under state law (often 30–45 days), the companies would dispose of the property instead of returning it to the borrower and add the fee to the borrowers' balance.

CFPB examiners concluded that it was an unfair practice to detain or refuse to return personal property found in a repossessed vehicle until the consumer paid a fee or where the consumer requested return of the property, regardless of what the consumer agreed to in the contract. Even when the consumer agreements and state law may have supported the lawfulness of charging the fee, examiners concluded there were no circumstances in which it was lawful to refuse to return property until after the fee was paid, instead of simply adding the fee to the borrower's balance as companies do with other repossession fees. Examiners observed circumstances in which this tactic of leveraging personal situations for collection purposes was extreme, including retention of tools essential to the consumer's livelihood and retention of personal possessions of negligible market value but of substantial emotional attachment or practical importance for the consumer.

Examiners also found that in some instances, one or more companies were engaging in the unfair practice of charging a borrower for storing personal property found in a repossessed vehicle when the consumer agreement disclosed that the property would be stored, but not that the borrower would need to pay for the storage. In these instances, based on the consumer contracts, it was unfair to charge these undisclosed fees at all.

In response to examiners' findings, one or more companies informed Supervision that it ceased charging borrowers to store personal property found in repossessed vehicles. In Supervision's upcoming auto loan servicing exams, examiners will be looking closely at how companies engage in repossession activities, including whether property is being improperly withheld from consumers, what fees are charged, how they are charged, and the context of how consumers are being treated to determine whether the practices were lawful.

2.3 Debt Collection

The Bureau examines certain bank creditors that originate and collect their own debt, as well as nonbanks that are larger participants in the debt collection market. During recent examinations, the Bureau's examiners have identified several violations of the Fair Debt Collection Practices Act (FDCPA), including charging consumers unlawful convenience fees, making several false representations to consumers, and unlawfully communicating with third parties in connection with the collection of a debt. Additionally, examiners have identified several violations of the FCRA, including failing to investigate indirect disputes, and having inadequate furnishing policies and procedures. Examiners also observed a beneficial practice that involved using collections scripts and guides to improve compliance when communicating with consumers.

2.3.1 Unlawful Fees

Prior editions of *Supervisory Highlights* noted that the FDCPA limits situations where a debt collector may impose convenience fees.[3] Under Section 808(1) of the FDCPA,[4] a debt collector may not collect any amount unless such amount is expressly authorized by the agreement creating the debt or permitted by law. In one or more exams, examiners observed that one or more debt collectors charged consumers a ''convenience fee'' to process payments by phone and online. Examiners determined that this convenience fee violated Section 808(1) where the consumer's contract does not expressly permit convenience fees and the applicable state's law was silent on whether such fees are permissible. Additionally, under section 807(2)(B) of the FDCPA,[5] a debt collector may not make false representations of compensation which may be lawfully received by the debt collector.

[2] 12 U.S.C. 5514(a)(1)(B).

[3] CFPB, *Supervisory Highlights,* 2.2.1 (Fall 2014).

[4] 15 U.S.C. 1692f(1).

[5] 15 U.S.C. 1692e(2)(B).

Examiners determined that collectors who demanded these unlawful fees, stated that the fees were ''nonnegotiable,'' or withheld information from consumers about other avenues to make payments that would not incur the fee after the consumer requested such information violated section 807(2)(B) of the FDCPA.

Supervision also found that one or more debt collectors violated section 808(1) of the FDCPA by charging collection fees in states where collection fees were prohibited or in states that capped collection fees at a threshold lower than the fees that were charged. Examiners also observed a CMS weakness at one or more collectors that had not maintained any records showing the relationship between the amount of the collection fee and the cost of collection.

The relevant entities have undertaken remedial and corrective actions regarding these violations; these matters remain under review by the Bureau.

2.3.2 False Representations

Section 807(10) of the FDCPA [6] prohibits debt collectors from using any false representation or deceptive means to collect a debt or obtain information concerning a consumer. At one or more debt collectors, examiners identified collection calls where employees purported to assess consumers' creditworthiness, credit scores, or credit reports, which were misleading because collectors could not assess overall borrower creditworthiness. Collectors also misled consumers by representing that an immediate payment would need to be made in order to prevent a negative impact on consumers' credit.

In one or more instances, examiners observed that collectors had impersonated consumers while using the relevant creditors' consumer-facing automated telephone system to obtain information about the consumer's debt. Examiners concluded that this constituted a false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

On one or more collection calls, examiners heard collectors tell consumers that the ability to settle the collection account was revoked or would expire. Examiners determined that these statements were false or were a deceptive means to collect a debt because the consumers still had the ability to settle. The relevant entities have undertaken remedial and corrective actions regarding these violations; these matters remain under review by the Bureau.

2.3.3 Communication With Third Parties

Section 805 of the FDCPA [7] prohibits debt collectors from communicating in connection with the collection of a debt with persons other than the consumer, unless the purpose is to acquire information about the consumer's location. Under section 804 of the FDCPA,[8] when communicating with third parties to acquire information about the consumer's location, a collector is prohibited from disclosing the name of the debt collection company unless the third party expressly requests it.

At one or more debt collectors, examiners identified several instances where collectors disclosed the debt owed by the consumer to a third party. These third-party communications were often caused by inadequate identity verification during telephone calls. Additionally, examiners observed several instances where collectors identified their employers to third parties without first being asked for that information by the third party.

The relevant entities have undertaken remedial and corrective actions regarding these violations; these matters remain under review by the Bureau.

2.3.4 Furnishing Policies and Procedures

Regulation V [9] requires a furnisher to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information furnished to consumer reporting agencies. Furnishers must consider the guidelines in Appendix E to Regulation V [10] in developing their policies and procedures and incorporate those guidelines that are appropriate. Examiners observed that one or more entities failed to provide adequate guidance and training to staff regarding differentiating FCRA disputes from general customer inquiries, complaints, or FDCPA debt validation requests. As a result, employees could not review the historic records of FCRA disputes or perform effective root cause analyses of disputes.

Supervision directed one or more entities to develop and implement reasonable policies and procedures to ensure that direct and indirect disputes are appropriately logged, categorized, and resolved. In addition, Supervision directed one or more entities to develop and implement a training program appropriately tailored to employees responsible for logging, categorizing, and handling FCRA direct and indirect disputes.

2.3.5 FCRA Dispute Handling

Section 623(b)(1) of the FCRA [11] requires furnishers to conduct investigations and report the results after receiving notice of a dispute from a consumer reporting agency. Examiners determined that one or more debt collectors never investigated indirect disputes that lacked detail or were not accompanied by attachments with relevant information from the consumer, in violation of Section 623(b)(1) of the FCRA.

For disputes that consumers make directly with furnishers under Section 1022.43(f)(3) of Regulation V, furnishers are required to provide the consumer with a notice of determination if a direct dispute is determined to be frivolous. The notice of determination must include the reasons for such determination and identify any information required to investigate the disputed information. At one or more debt collectors, examiners observed that for disputes categorized as frivolous, the notices did not say what the consumer needed to provide in order for the collector to complete the investigation. The relevant entities have undertaken remedial and corrective actions regarding these violations; the matters are under review by the Bureau.

2.3.6 Regulation E Authorization for Preauthorized Electronic Fund Transfers

Regulation E [12] requires companies to provide consumers with a copy of the authorization for preauthorized electronic fund transfers.[13] Examiners found that one or more debt collectors failed to provide consumers with a copy of the terms of the authorization, either electronically or in paper form. Some of the debt collectors instead sent consumers a payment confirmation notice before each electronic fund transfer. This notice did not describe the recurring nature of the preauthorized transfers from the consumer's account, such as by describing the timing and amount of the recurring transfers. Examiners found that the payment confirmation notices did not meet

[6] 15 U.S.C. 1692e(10).

[7] 15 U.S.C. 1692c(b).

[8] 15 U.S.C. 1692b(1).

[9] 12 CFR 1022.42(a).

[10] 12 CFR 1022, App. E.

[11] 15 U.S.C. 1681s–2(b)(1).

[12] 12 CFR 1005.10(b).

[13] *See* CFPB Compliance Bulletin 2015–06, *available at http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/bulletin-consumer-authorizations-preauthorized-EFT/.*

Regulation E's requirement to send consumers a written copy of the terms of the authorization.

Supervision directed one or more entities to revise their policies and procedures to ensure compliance with the requirement to provide consumers with a copy of the authorization as required by Regulation E. Supervision also directed the debt collectors to modify their training and monitoring to reflect this change and to prevent future violations of Regulation E.

2.3.7 Effective and Beneficial Use of Scripts and Guides in Compliance With FDCPA

Debt collection calls must comply with the FDCPA and any applicable state laws and regulations. At one or more entities, exam teams observed a well-established, formal compliance program that met CFPB's supervisory expectations. In particular, agents were supplied with guides and scripts to improve adherence to compliance policies. Script adherence was regularly monitored and infractions led to salary/bonus reductions. Additionally, compliance personnel analyzed trends of violations, conducted root cause analyses, and escalated identified violation trends to management for proposed changes to policies and procedures. Examiners found that, as a result, collection agents at one or more entities consistently followed collection scripts which led to greater compliance.

2.4 Mortgage Origination

The Bureau continues to examine entities' compliance with provisions of the CFPB's Title XIV rules,[14] existing Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA)[15] disclosure provisions,[16] and other applicable Federal consumer financial laws. Examiners also evaluate entities' CMS.

2.4.1 CMS Strengths

During the period under review at one or more institutions, examiners determined that the overall CMS was strong for the size, risk profile, and operational complexity of their mortgage origination business. Board and management took an active role in reviewing and approving policies and procedures; the compliance program addressed compliance with applicable Federal consumer financial laws; training was tailored to the institutions' job functions and was updated and delivered annually; the monitoring function adapted to changes and took corrective action to address deficiencies; institutions had policies and procedures that established clear expectations for timely handling and resolution of complaints and analyzed the root causes of complaints; and audit programs that were comprehensive and independent of the compliance program and business functions.

2.4.2 CMS Deficiencies

Despite the identified strengths at one or more institutions, examiners concluded that the overall mortgage origination CMS at one or more other institutions was weak because it allowed violations of Regulations G, N, X, and Z to occur. For example, one or more institutions did not conduct compliance audits of mortgage origination activities, had weak oversight of service providers, and had not implemented procedures for establishing clear expectations to adequately mitigate the risk of harm arising from third-party relationships. Supervision directed the entities' management to take corrective action.

2.4.3 Failure To Verify Total Monthly Income in Determining Ability To Repay

Regulation Z requires creditors to make a reasonable and good faith determination of a consumer's ability to repay (ATR) at or before consummation.[17] Accordingly, Regulation Z sets forth eight factors a creditor must consider[18] when making the required ATR determination.[19] A creditor must verify the information that will be relied upon in determining the consumer's repayment ability and this verification must be specific to the individual consumer.[20] One factor Regulation Z requires a creditor to consider is the consumer's current or reasonably expected income or assets.[21] Another factor a creditor must consider is the consumer's monthly debt-to-income (DTI) ratio or residual income. Regulation Z outlines how to calculate the monthly DTI ratio, residual income, and the total monthly income.[22] Total monthly income[23] used to calculate the consumer's monthly debt-to-income ratio or residual income must be verified using third-party records that provide reasonably reliable evidence of the consumer's income or assets, specific to the individual consumer.[24] Whether the creditor considers the consumer's current or reasonably expected income or the consumer's assets, a creditor remains obligated to consider the consumer's monthly DTI ratio or residual income in accordance with Regulation Z. This means that a creditor must verify the income that it relies on in considering the monthly DTI ratio or residual income.[25]

In one or more instances, supervised entities offered mortgage loan programs that accepted alternative income documentation for salaried consumers as part of their underwriting requirements. According to the supervised entities, they relied primarily on the assets of each consumer when making an ATR determination, but also established a maximum monthly DTI ratio in their underwriting policies and procedures.[26] For these loans, examiners confirmed the assets were verified using reasonably reliable third-party records such as financial institution records. However, examiners found that the income disclosed on the application to calculate the consumer's monthly DTI ratio was not verified, but instead was tested for reasonableness using an internet-based tool that aggregates employer data and estimates income based upon each consumer's residence zip code address, job title, and years in their current occupation.

Supervision concluded that this practice of failing to properly verify the consumer's income relied upon in considering and calculating the consumer's monthly DTI ratio violated ATR requirements.[27] Supervision directed these supervised entities to revise their underwriting policies and

[14] These Title XIV rules include the Loan Originator Rule (12 CFR 1026.36), the Ability to Repay rule (12 CFR 1026.43), and rules reflecting amendments to the Equal Credit Opportunity Act and Truth in Lending Act regarding appraisals and valuations (12 CFR 1002.14 and 12 CFR 1026.35).

[15] TILA is implemented by Regulation Z and RESPA by Regulation X.

[16] These mortgage origination examination findings cover a period preceding the effective date of the Know Before You Owe Integrated Disclosure Rule. The disclosures reviewed in these exams are the Good Faith Estimate (GFE), the Truth in Lending disclosure, and the HUD–1 form.

[17] 12 CFR 1026.43(c)(1).

[18] One of the eight factors, the consumer's current employment status under 12 CFR 1026.43(c)(2)(ii), is conditional and considered if the creditor relies on income from the consumer's employment.

[19] 12 CFR 1026.43(c)(2)(i)–(c)(2)(viii).

[20] 12 CFR 1026.43(c)(3); Official Interpretation to 43(c)(3)–1 [Verification Using Third-Party Records—Records Specific to the Individual Consumer]. Records a creditor uses for verification under § 1026.43(c)(3) and (4) must be specific to the individual consumer. Records regarding average incomes in the consumer's geographic location or average wages paid by the consumer's employer, for example, are not specific to the individual consumer and are not sufficient for verification.

[21] 12 CFR 1026.43(c)(2)(i).

[22] 12 CFR 1026.43(c)(2)(vii); (c)(7).

[23] 12 CFR 1026.43(c)(7)(i)(B).

[24] 12 CFR 1026.43(c)(3); (c)(4); Official Interpretations to 43(c)(3)–1 and 43(c)(4)–1.

[25] 12 CFR 1026.43(c)(2)(i), (vii).

[26] The originated loans in these programs were not designated by the supervised entities as qualified mortgage loans.

[27] 12 CFR 1026.43(c)(2)(vii), (c)(4), and (c)(7).

procedures in order to comply with the consideration, calculation, and verification of income requirements concerning the consumer's monthly DTI ratio or residual income when making the consumer's repayment ability determination.

2.4.4 Failure To Provide Timely Disclosures

Creditors are required to provide several disclosures to consumers no later than three business days after receiving a consumer's application for a close-end loan secured by a first lien on a dwelling. For examinations covering the period prior to the October 3, 2015, effective date for the Know Before You Owe mortgage disclosure rule, these disclosures included a written notice of the consumer's right to receive a copy of all written appraisals developed in connection with the application,[28] and a good faith estimate (GFE) of settlement costs.[29] Creditors were also required to provide a clear and conspicuous written list of homeownership counseling organizations.[30] One or more institutions failed to provide these disclosures within three business days after receiving the consumer's application. The institutions agreed to strengthen their monitoring and corrective action functions to address the timeliness of disclosures.

2.4.5 Failure To Ensure That Loan Originators Are Properly Licensed or Registered Under the Applicable SAFE Act Regulation

Regulation Z requires that loan originator organizations ensure that, before individuals who work for them act as loan originators in consumer credit transactions, they must be licensed or registered as required by the SAFE Act, its implementing Regulations G and H, and state SAFE Act implementing law.[31] One or more Federally-regulated depository institutions used employees of a staffing agency to originate loans on their behalf. These employees were improperly registered in the National Multistate Licensing System and Registry (NMLSR) as employees of the depository institutions. The staffing agency was not a Federally-regulated depository, and its employees were not eligible to register under Regulation G; instead, their eligibility was governed by Regulation H and applicable state law. Supervision directed the institutions to discontinue the practice of using employees of third parties who are not properly registered or licensed.

2.5 Student Loan Servicing

The Bureau continues to examine Federal and private student loan servicing activities, primarily assessing whether entities have engaged in unfair, deceptive, or abusive acts or practices prohibited by the Dodd-Frank Act. In the Bureau's recent student loan servicing examinations, examiners identified a number of unfair or deceptive acts or practices.

2.5.1 Income-Driven Repayment Plan Applications

Borrowers with Federal loans are eligible for specific income-driven repayment (IDR) plans that allow them to lower their monthly payments to an affordable amount based on their monthly income.[32] In response to a request for information last year, the Bureau heard from a significant number of consumers and commenters that borrowers are encountering problems when attempting to enroll and apply for IDR plans.[33] In August of this year, the Bureau issued a midyear update on student loan complaints. The report notes that the Bureau has received complaints on issues relating to enrollment in IDR plans since the Bureau began accepting Federal student loan servicing complaints.[34]

During one or more recent exams of student loan servicers, examiners determined that servicers were engaging in the unfair practice of denying, or failing to approve, IDR applications that should have been approved on a regular basis. When servicers fail to approve valid IDR applications, borrowers can be injured by having to make higher payments, losing months that would count towards loan forgiveness, or being subjected to unnecessary interest capitalization.

In light of this unfair practice, Supervision has directed one or more servicers to remedy borrowers who were improperly denied, and significantly enhance policies and procedures to promptly follow up with consumers who submit applications that are incomplete, prioritize applications that are approaching recertification deadlines, and implement a monitoring program to rigorously verify the accuracy of IDR application decisions. Servicers seeking guidance on how to improve IDR application processing may wish to refer to the policy memo published by the Department of Education on July 20, 2016.[35]

2.5.2 Borrower Choice for Payment Allocation

Supervision has continued to identify unfair practices relating to how servicers provide borrower choice on allocating payments among multiple loans.[36] Borrowers often have to take out multiple student loans to pay for school, and servicers usually manage multiple student loans by compiling them into one account, billing statement, and/or consumer profile. But borrowers generally retain the right to choose how their payments are allocated among the discrete student loan obligations.

In one or more recent exams, Bureau examiners cited servicers for the unfair practice of failing to provide an effective choice on how payments should be allocated among multiple loans where the lack of choice can cause a financial detriment to consumers. One or more servicers failed to provide an effective choice by, for example, not giving borrowers the ability to allocate payments to individual loans in certain circumstances, not effectively disclosing that borrowers have the ability to provide payment instructions, or not effectively disclosing important information (like the allocation methodology used when instructions are not provided).

Examiners have found that failing to provide borrowers with an effective choice on how to allocate payments can result in financial detriment when a servicer allocates payments proportionally among all loans absent payment instructions from the borrower. For payments that exceed a borrower's monthly payment, borrowers may wish to allocate funds to loans with higher interest rates instead of a default proportional allocation. For payments that are lower than a borrower's monthly payment, borrowers may wish

[28] 12 CFR 1002.14(a)(2).

[29] 12 CFR 1024.7(a)(1).

[30] 12 CFR 1024.20(a)(1).

[31] 12 CFR 1026.36(f)(2).

[32] *See https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven.*

[33] *See* Consumer Financial Protection Bureau, Student Loan Servicing: Analysis of public input and recommendations for reform, pg. 27–38 (September 2015), *available at http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.*

[34] Consumer Financial Protection Bureau, Midyear update on student loan complaints: Income-driven repayment plan application issues (Aug. 2016), *available at http://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf.*

[35] Under Secretary Ted Mitchell, Policy Direction on Student Loan Servicing, pg. 20–22 (July 20, 2016), *available at http://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf.*

[36] *See* CFPB, *Supervisory Highlights,* 2.5.1 (Fall 2014), *available at http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf;* CFPB, *Supervisory Highlights,* 2.5.1 (Fall 2015), *available at http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf.*

to allocate funds in a manner that minimizes late fees, interest accrual, or the severity of delinquency, or in other manners, rather than proportionally allocating the underpayment.

After finding this unfair practice, the Bureau directed one or more servicers to hire an independent consultant to conduct user testing of servicer communications in order to improve how the communications describe the basic principles of the servicer's payment allocation methodologies, as well as the consumer's ability to provide payment instructions. Servicers seeking guidance on how to improve their billing statements, Web sites, or allocation methodologies may wish to consider the applicable content in the Department of Education's recent policy memo.[37]

2.5.3 Communications Relating to Paid-Ahead Status

When borrowers submit a payment in an amount that would cover the current month's payment and at least another monthly payment, servicers apply the excess funds immediately to accrued interest and principal. Unless borrowers choose otherwise, servicers also typically advance the due date such that $0 is billed in the months that were covered by the extra funds from the overpayment.[38] These loans are considered to be ''paid ahead,'' and borrowers don't have to make payments when they are billed $0. However, a significant amount of accrued interest can accumulate during a paid ahead period, depending on how long the borrower doesn't pay, because interest continues to accrue. When borrowers resume making monthly payments on a loan, their payments must be applied to that accumulated interest before any money is used to pay down principal on that loan.

On one or more occasions, Supervision cited a student loan servicer for a deceptive practice relating to how the servicer describes what the consumer owes and when. Supervision concluded that one or more servicers' billing statements could have misled reasonable borrowers to believe additional payments during *or after* a paid-ahead period would be applied largely to principal. The bills noted that $0.00 was due in months that the borrower was paid ahead, but misled consumers as to how much interest would accrue or had accrued, and how that would affect the application of consumers' payments when the borrower began making payments again.

After finding this deceptive practice, the Bureau directed one or more servicers to hire an independent consultant to conduct user testing of servicer communications to improve how the servicer communicates about these concepts. Servicers seeking guidance on what to include in their billing statements may wish to consider the applicable content in the Department of Education's recent policy memo.[39]

2.5.4 System Errors

Supervision continues to identify systems errors impacting student loan borrowers.[40] For example, examiners found a data error affecting thousands of Federal loan accounts that caused borrowers' next-to-last payment to be significantly smaller, contrary to consumers' repayment plans. Because borrowers were not billed amounts that would add up to cover the whole balance in accordance with the borrower's repayment plan, the borrower continued to be billed small amounts for months or years, increasing the total amount of interest that accrued. On one or more occasions, examiners cited this practice as unfair, and directed the servicer to remediate consumers and fix the data corruption for borrowers who had not yet reached the next-to-last payment.

3. Fair Lending

3.1 Provision of Language Services to Limited English Proficient (LEP) Consumers

The Dodd-Frank Act, the Equal Credit Opportunity Act (ECOA),[41] and Regulation B mandate that the Office of Fair Lending and Equal Opportunity (Office of Fair Lending) ''ensure the fair, equitable, and nondiscriminatory access to credit''[42] and ''promote the availability of credit.''[43] Consistent with that mandate, the CFPB, including through its Office of Fair Lending, continues to encourage lenders to provide assistance to consumers with limited English proficiency (LEP consumers).[44] Financial institutions may provide access to credit in languages other than English in a manner that is beneficial to consumers as well as the institution, while taking steps to ensure their actions are compliant with ECOA and other applicable laws.

3.1.1 Supervisory Observations

In the course of conducting supervisory activity, examiners have observed one or more financial institutions providing services in languages other than English, including to consumers with limited English proficiency,[45] in a manner that did not result in any adverse supervisory or enforcement action under the facts and circumstances of the reviews. Specifically, examiners observed:

- Marketing and servicing of loans in languages other than English;
- Collection of customer language information to facilitate communication with LEP consumers in a language other than English;
- Translation of certain financial institution documents sent to borrowers, including monthly statements and payment assistance forms, into languages other than English;
- Use of bilingual and/or multilingual customer service agents, including single points of contact,[46] and other forms of oral customer assistance in languages other than English; and
- Quality assurance testing and monitoring of customer assistance provided in languages other than English.

[37] Under Secretary Ted Mitchell, Policy Direction on Student Loan Servicing, pg. 27–36 (July 20, 2016), *available at http://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf.*

[38] Regulation requires servicers to advance the due date, unless the borrower instructs otherwise, for Federal loans. 34 CFR 682.209(b); 34 CFR 685.211(a).

[39] Under Secretary Ted Mitchell, Policy Direction on Student Loan Servicing, pg. 35–36 (July 20, 2016), *available at http://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf.*

[40] *See* CFPB, *Supervisory Highlights,* 2.5.2 (Fall 2015), *available at http://files.consumerfinance.gov/f/201510_cfpb_supervisory-highlights.pdf.*

[41] 12 U.S.C. 1691 *et seq.*

[42] 12 U.S.C. 5493(c)(2)(A).

[43] 12 CFR 1002.1(b).

[44] According to recent American Community Survey estimates, there are approximately 25 million people in the United States who speak English less than ''very well.'' 2010–2014 American Community Survey 5-Year Estimates, Language Spoken at Home, *available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_S1601&prodType=table.*

[45] The Bureau recently updated its ECOA baseline review modules. *See* Supervisory Highlights: Winter 2016 4.1.1, *available at http://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf.* Among other updates, the modules include new questions related to the provision of language services, including to LEP consumers, in the context of origination and servicing. *See* ECOA Baseline Review Module 13, 21–22 (Oct. 2015), *available at http://files.consumerfinance.gov/f/201510_cfpb_ecoa-baseline-review-modules.pdf.* These modules are ''used by examiners during ECOA baseline reviews to identify and analyze risks of ECOA violations, to facilitate the identification of certain types of ECOA and Regulation B violations, and to inform fair lending prioritization decisions for future CFPB reviews.'' *Id.* at 1.

[46] *See* 12 CFR 1024.40(a)(1) and (2) (requiring mortgage servicers to assign personnel to a delinquent borrower within a certain time after delinquency and make assigned personnel available by phone in order to respond to borrower inquiries and assist with loss mitigation options, as applicable).

Examiners have observed a number of factors that financial institutions consider in determining whether to provide services in languages other than English and the extent of those services, some of which include: Census Bureau data on the demographics or prevalence of non-English languages within the financial institution's footprint; communications and activities that most significantly impact consumers (*e.g.,* loss mitigation and/or default servicing); and compliance with Federal, state, and other regulatory provisions that address obligations pertaining to languages other than English.[47] Factors relevant in the compliance context may vary depending on the institution and circumstances.

3.1.2 Observations

Examiners also have observed situations in which financial institutions' treatment of LEP and non-English-speaking consumers posed fair lending risk. For example, examiners observed one or more institutions marketing only some of their available credit card products to Spanish-speaking consumers, while marketing several additional credit card products to English-speaking consumers. One or more such institutions also lacked documentation describing how they decided to exclude those products from Spanish language marketing, raising questions about the adequacy of their compliance management systems related to fair lending. To mitigate any compliance risks related to these practices, one or more financial institutions revised their marketing materials to notify consumers in Spanish of the availability of other credit card products and included clear and timely disclosures to prospective consumers describing the extent and limits of any language services provided throughout the product lifecycle. Institutions were not required to provide Spanish language services to address this risk beyond the Spanish language services they were already providing.

3.1.3 Supervisory Activity Resulting in Enforcement Actions

Bureau supervisory activity has also revealed violations of Federal consumer financial law related to treatment of LEP and non-English-speaking consumers. In June 2014, the Bureau and the Department of Justice announced an enforcement action against Synchrony Bank, formerly known as GE Capital Retail Bank, to address violations of ECOA based on, among other things, the exclusion of consumers who had indicated that they preferred to communicate in Spanish from two different promotions about beneficial debt-relief offers. For as long as three years, the bank did not provide the offers to these consumers, in *any* language, including English, even if the consumer otherwise met the promotion's qualifications.[48] In addition to requiring remediation to affected consumers, the bank was ordered to ensure that consumers who had expressed a preference for communicating in Spanish were not excluded from receiving credit offers.

In December 2013, the Bureau announced an enforcement action against American Express Centurion Bank addressing, among other violations of law, deceptive acts or practices in telemarketing of a credit card add-on product to Spanish-speaking customers in Puerto Rico. The vast majority of consumers enrolled in this product enrolled via telemarking calls conducted in Spanish. Yet American Express did not provide uniform Spanish language scripts for these enrollment calls, and all written materials provided to consumers were in English. As a result, American Express did not adequately alert consumers enrolled via telemarketing calls conducted in Spanish about the steps necessary to receive and access the full product benefits. The statements and omissions by American Express were likely to affect a consumer's choice or conduct regarding the product and were likely to mislead consumers acting reasonably under the circumstances.[49] In addition to requiring remediation to affected consumers, the bank was ordered to, among other things, eliminate all deceptive acts and practices, including deceptive representations, statements, or omissions in its add-on product marketing materials and telemarketing scripts.

3.1.4 Compliance Management

As with any consumer-facing program, financial institutions can mitigate fair lending and other risks associated with providing services in languages other than English by implementing a strong CMS that considers treatment of LEP and non-English-speaking consumers. Although the appropriate scope of an institution's fair lending CMS will vary based on its size, complexity, and risk profile, common features of a well-developed CMS include:

- An up-to-date fair lending policy statement, documenting the policies, procedures, and decision-making related to the institution's provision of language services;
- Regular fair lending training for all officers and board members as well as all employees involved with any aspect of the institution's credit transactions, including the provision of language services;
- Review of lending policies for potential fair lending risk;
- Ongoing monitoring for compliance with fair lending policies and procedures, and appropriate corrective action if necessary;
- Ongoing monitoring for compliance with other policies and procedures that are intended to reduce fair lending risk (such as controls on loan originator discretion), and appropriate corrective action if necessary;
- Depending on the size and complexity of the financial institution, regular statistical analysis (as appropriate) of loan-level data for potential disparities on a prohibited basis in underwriting, pricing, or other aspects of the credit transaction, including both mortgage and non-mortgage products such as credit cards, auto lending, and student lending;
- Regular assessment of the marketing of loan products. For example, institutions may elect to monitor language services for risk of steering, exclusion of LEP and non-English-speaking consumers from certain offers, or any other fair lending risk, and for risk of unfair, deceptive, or abusive acts or practices; and

[47] *See, e.g.,* 12 CFR 1005.31(g)(1)(i) (requiring disclosures in languages other than English in certain circumstances involving remittance transfers); 12 CFR 1026.24(i)(7) (addressing obligations relating to advertising and disclosures in languages other than English for closed-end credit); 12 CFR 1002.4(e) (providing that disclosures made in languages other than English must be available in English upon request); Cal Civ Code 1632(b) (requiring that certain agreements ''primarily'' negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean must be translated to the language of the negotiation under certain circumstances); Or Rev Stat § 86A.198 (requiring a mortgage banker, broker, or originator to provide translations of certain notices related to the mortgage transaction if the banker, broker, or originator advertises and negotiates in a language other than English under certain circumstances); Tex Fin Code Ann 341.502(a–1) (providing that for certain loan contracts negotiated in Spanish, a summary of the loan terms must be made available to the debtor in Spanish in a form identical to required TILA disclosures for closed-end credit).

[48] *See* Supervisory Highlights: Fall 2014 Section 2.7.1, *available at http://files.consumerfinance.gov/f/201410_cfpb_supervisory-highlights_fall-2014.pdf. See also In re Synchrony Bank,* No. 2014–CFPB–0007 (June 19, 2014), *available at http://files.consumerfinance.gov/f/201406_cfpb_consent-order_synchrony-bank.pdf.*

[49] *See In re American Express Centurion Bank,* No. 2013–CFPB–0011 (Dec. 24, 2013), *available at http://files.consumerfinance.gov/f/201312_cfpb_consent_amex_centurion_011.pdf.*

▪ Meaningful oversight of fair lending compliance by management and, where appropriate, the financial institution's board of directors.[50]

While many CFPB-supervised institutions face similar fair lending risks, they may differ in how they manage those risks. The CFPB understands that compliance management will be handled differently by large, complex financial organizations at one end of the spectrum, and small entities that offer a narrow range of financial products and services at the other end. While the characteristics and manner of organization will vary from entity to entity, the CFPB expects compliance management activities to be a priority and to be appropriate for the nature, size, and complexity of the financial institution's consumer business.

The Bureau remains interested in understanding how institutions provide products and services in languages other than English in a way that promotes access to responsible credit and services. The Bureau welcomes engagement with institutions on how to promote access for LEP and non-English-speaking consumers.

3.2 HMDA Data Collection and Reporting Reminders for 2017

Beginning with Home Mortgage Disclosure Act (HMDA) data collected in 2017 and submitted in 2018, responsibility to receive and process HMDA data will transfer from the Federal Reserve Board (FRB) to the CFPB. The HMDA agencies have agreed that a covered institution filing HMDA data collected in or after 2017 with the CFPB will be deemed to have submitted the HMDA data to the appropriate Federal agency.[51]

The effective date of the change in the Federal agency that receives and processes the HMDA data does not coincide with the effective date for the new HMDA data to be collected and reported under the Final Rule amending Regulation C published in the **Federal Register** on October 28, 2015. The Final Rule's new data requirements will apply to data collected beginning on January 1, 2018. The data fields for data collected in 2017 have not changed.

The following information is from the Bureau's HMDA Filing Instructions Guide (FIG). Additional information about HMDA, the FIG and other data submission resources is located at: *http://www.consumerfinance.gov/data-research/hmda/.*

3.2.1 New HMDA Platform

Beginning with data collected in 2017, filers will submit their HMDA data using a web interface referred to as the ''HMDA Platform.'' The following submission methods will *not* be permitted for data collected in or after 2017:

▪ PC Diskette and CD–ROM.

▪ Submission via Web (from the Data Entry Software (DES)).

▪ Email to *HMDASUB@FRB.GOV*.

▪ Paper Submissions.

Also, beginning with the data collected in 2017, as part of the submission process, a HMDA reporter's authorized representative with knowledge of the data submitted shall certify to the accuracy and completeness of the data submitted. Filers will not fax or email the signed certification.

3.2.2 Loan/Application Register Format

Beginning with data collected in 2017, HMDA data loan/application registers (LAR) will be submitted in a pipe (also referred to as vertical bar) delimited text file format (.txt). This means that:

▪ Each data field within each row will be separated with a pipe character, ''|''.

▪ Zeros do not need to be added for the sole purpose of making a data field a specific number of characters.[52]

▪ Filler data fields will no longer be used in the file.

▪ The loan/application register will be a text file with a .txt file format extension.

Text entries in alphanumeric fields do not need to use all uppercase letters with the exception of:

▪ NA'' used when the reporting requirement is not applicable.

▪ Two letter state codes.

As with previous submissions:

▪ The first row of the HMDA LAR will begin with the number one (1) to indicate that the data fields in row one contain data fields for the transmittal sheet, with information relating to your institution.

▪ All subsequent rows of HMDA LAR will begin with the number two (2) to indicate that the data fields beginning in row two contain data fields for LAR, with information relating to the reported loan or application.

▪ Each row will end with a carriage return.

3.3 Redlining

The Office of Fair Lending has identified redlining as a priority area in the Bureau's supervisory work. Redlining is a form of unlawful lending discrimination under ECOA. Historically, actual red lines were drawn on maps around neighborhoods to which credit would not be provided, giving this practice its name.

The Federal prudential banking regulators have collectively defined redlining as ''a form of illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located.''[53]

The Bureau considers various factors, as appropriate, in assessing redlining risk in its supervisory activity. These factors, and the scoping process, are described in detail in the Interagency Fair Lending Examination Procedures (IFLEP). These factors generally include (but are not limited to):

▪ Strength of an institution's CMS, including underwriting guidelines and policies;

▪ Unique attributes of relevant geographic areas (population demographics, credit profiles, housing market);

▪ Lending patterns (applications and originations, with and without purchased loans);

▪ Peer and market comparisons;

▪ Physical presence (full service branches, ATM-only branches, brokers, correspondents, loan production offices), including consideration of services offered;

▪ Marketing;

▪ Mapping;

▪ Community Reinvestment Act (CRA) assessment area and market area more generally;

▪ An institution's lending policies and procedures record;

▪ Additional evidence (whistleblower tips, loan officer diversity, testing evidence, comparative file reviews); and

[50] For additional information regarding strong CMS for managing fair lending risks, see *Supervisory Highlights,* section II, C (Fall 2012) *available at http://files.consumerfinance.gov/f/201210_cfpb_supervisory-highlights-fall-2012.pdf* and *Supervisory Highlights,* section 3.2.1 (Summer 2014) *available at http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.*

[51] The HMDA agencies refer collectively to the CFPB, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the FRB, the National Credit Union Administration (NCUA), and the Department of Housing and Urban Development (HUD).

[52] The one exception to this instruction is for rate spreads collected in 2017; rate spread is entered to two decimal places using a leading zero, for example, 03.29.

[53] FFIEC Interagency Fair Lending Examination Procedures (IFLEP) Manual, *available at https://www.ffiec.gov/pdf/fairlend.pdf.*

CFPB Supervision and Examination Manual, *available at http://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations.*

▪ An institution's explanations for apparent differences in treatment.

The Bureau has observed that institutions with strong compliance programs examine lending patterns regularly, look for any statistically-significant disparities, evaluate physical presence, monitor marketing campaigns and programs, and assess CRA assessment areas and market areas more generally. Our supervisory experience reveals that institutions may reduce fair lending risk by documenting risks they identify and by taking appropriate steps in response to identified risks, as components of their fair lending compliance management programs.

Examination teams typically assess redlining risk, at the initial phase, at the Metropolitan Statistical Area (MSA) level for each supervised entity, and consider the unique characteristics of each MSA (population demographics, etc.).

To conduct the initial analysis, examination teams use HMDA data and census data [54] to assess the lending patterns at institutions subject to the Bureau's supervisory authority. To date, examination teams have used these publicly-available data to conduct this initial risk assessment. These initial analyses typically compare a given institution's lending patterns to other lenders in the same MSA to determine whether the institution received significantly fewer applications from minority [55] areas [56] relative to other lenders in the MSA.

Examination teams may consider the difference between the subject institution and other lenders in the percentage of their applications or originations that come from minority areas, both in absolute terms (for example, 10% vs. 20%) and relative terms (for example, the subject institution is half as likely to have applications or originations in minority areas as other lenders).[57]

Examination teams may also compare an institution to other more refined groups of peer institutions. Refined peers can be defined in a number of ways, and past Bureau redlining examinations and enforcement matters have relied on multiple peer comparisons. The examination team often starts by compiling a refined set of peer institutions to find lenders of a similar size—for example, lenders that received a similar number of applications or originated a similar number of loans in the MSA. The examination team may also consider an institution's mix of lending products. For example, if an institution participates in the Federal Housing Administration (FHA) loan program, it may be compared to other institutions that also originate FHA loans; if not, it may be compared to other lenders that do not offer FHA loans. Additional refinements may incorporate loan purpose (for example, focusing only on home purchase loans) or action taken (for example, incorporating purchased loans into the analysis). Examination teams have also taken suggestions, as appropriate, from institutions about appropriate peers in specific markets.

In considering lending patterns, examination teams also generally consider marketing activities and physical presence, including locations of branches, loan production offices, ATMs, brokers, or correspondents. In one or more supervisory matters, the institutions concentrated marketing in majority-White suburban counties of an MSA and avoided a more urban county with the greatest minority population in the MSA. In one or more other exams, examiners observed that, although there were disparities in branch locations, the location of branches did not affect access to credit in that case because, among other things, the branches did not accept ''walk-in'' traffic and all applications were submitted online. The results of the examinations were also dependent on other factors that showed equitable access to credit, and there could be cases in which branch locations in combination with other risk-based factors escalate redlining risk.

For redlining analyses, examination teams generally map information, including data on lending patterns (applications and originations), marketing, and physical presence, against census data to see if there are differences based on the predominant race/ethnicity of the census tract, county, or other geographic designation. Additionally, examination teams will consider any other available evidence about the nature of the lender's business that might help explain the observed lending patterns.

Examination teams have considered numerous factors in each redlining examination, and have invited institutions to identify explanations for any apparent differences in treatment. Although redlining examinations are generally scheduled at institutions where the Bureau has identified statistical disparities, statistics are never considered in a vacuum. The Bureau will always work with institutions to understand their markets, business models, and other information that could provide nondiscriminatory explanations for lending patterns that would otherwise raise a fair lending risk of redlining.

3.4 Consent Order Update: Ally Financial Inc. and Ally Bank

On December 19, 2013, working in close coordination with the DOJ, the CFPB ordered Ally Financial Inc. and Ally Bank (Ally) to pay $80 million in damages to harmed African-American, Hispanic, and Asian and/or Pacific Islander borrowers. The DOJ simultaneously filed a consent order in the United States District Court for the Eastern District of Michigan, which was entered by the court on December 23, 2013. This public enforcement action represented the federal government's largest auto loan discrimination settlement in history.

On January 29, 2016, approximately 301,000 harmed borrowers participating in the settlement—representing approximately 235,000 loans—were mailed checks by the Ally settlement administrator, totaling $80 million plus interest. In addition, and pursuant to its continuing obligations under the terms of the orders, Ally has also made ongoing payments to consumers affected after the consent orders were entered. Specifically, Ally paid approximately $38.9 million in September 2015 and an additional $51.5 million in May 2016, to consumers that Ally determined were both eligible and overcharged on auto

[54] The Bureau uses the most current United States national census data that apply to the HMDA data—for example, to date it has used 2010 census data for HMDA data 2011 and later. Specifically, the ''Demographic Profiles'' are used.

[55] For these purposes, the term ''minority'' ordinarily refers to anyone who identifies with any combination of race or ethnicity other than non-Hispanic White. Examination teams have also focused on African-American and Hispanic consumers, and could foreseeably focus on other more specific minority communities such as Asian, Native Hawaiian, or Native Alaskan populations, if appropriate for the specific geography. In one examination that escalated to an enforcement matter, the statistical evidence presented focused on African-American and Hispanic census tracts, rather than all minority consumers, because the harmed consumers were primarily African-American and Hispanic.

[56] Examination teams typically look at majority minority areas (>50% minority) and high minority areas (>80% minority), although sometimes one metric is more appropriate than another, and sometimes other metrics need to be used to account for the population demographics of the specific MSA.

[57] This relative analysis may be expressed as an odds ratio: the given lender's odds of receiving an application or originating a loan in a minority area divided by other lenders' comparable odds. An odds ratio greater than one means that the institution is more likely to receive applications or originate loans in minority areas than other lenders; an odds ratio lower than one means that the institution is less likely do so. Odds ratios show greater risk as they approach zero.

loans issued during 2014 and 2015, respectively.[58]

4. Remedial Actions

4.1.1. Public Enforcement Actions

The following public enforcement actions resulted, at least in part, from examination work.

First National Bank of Omaha

On August 25, the CFPB announced an enforcement action against First National Bank of Omaha for its deceptive marketing practices and illegal billing of customers of add-on products. The bank used deceptive marketing to lure consumers into debt cancellation add-on products and it charged consumers for credit monitoring services they did not receive. Among other things, the bank disguised the fact that it was selling consumers a product, distracted consumers into making a purchase, made cancellation of debt cancellation products difficult, and billed for credit monitoring services not provided.

The Bureau's order required First National Bank of Omaha to end unfair billing and other illegal practices, provide $27.75 million in relief to roughly 257,000 consumers harmed by its illegal practices, and pay a $4.5 million civil money penalty.

Wells Fargo Bank, N.A

On August 22, the CFPB took action against Wells Fargo Bank for illegal private student loan servicing practices that increased costs and unfairly penalized certain student loan borrowers. The Bureau identified breakdowns throughout Wells Fargo's loan servicing process, including failing to provide important payment information to consumers, charging consumers illegal fees, and failing to update inaccurate credit report information. The order requires Wells Fargo to improve its consumer billing and student loan payment processing practices, provide $410,000 in relief to borrowers, and pay a $3.6 million civil money penalty.

4.1.2 Non-Public Supervisory Actions

In addition to the public enforcement actions above, recent supervisory activities have resulted in approximately $11.3 million in restitution to more than 225,000 consumers. These non-public supervisory actions generally have been the product of CFPB ongoing supervision and/or targeted examinations, involving either examiner findings or self-reported violations of Federal consumer financial law. Recent non-public resolutions were reached in the areas of deposits, mortgage servicing, and credit cards.

5. Supervision Program Developments

5.1 Examination Procedures

5.1.1 Reverse Mortgage Servicing Examination Procedures

Today, the CFPB is publishing procedures for examining reverse mortgage servicers.[59] A reverse mortgage allows older homeowners to borrow against the equity in their homes. Unlike a traditional home equity loan, instead of making payments to the servicer, the borrower receives payments from the lender. Over time, the loan amount grows, and must be repaid when the borrower dies or an event of default occurs. The Bureau has received complaints from consumers relating to the servicing of reverse mortgages. The procedures detail how examiners will review a reverse mortgage servicer's compliance with applicable regulations and assess other risks to consumers. The publication of these procedures precedes supervision of reverse mortgage servicers.

5.1.2 Student Loan Servicing Examination Procedures

The Bureau is also publishing today new procedures for examining student loan servicers,[60] the entities that take payments and manage borrower accounts for consumers of Federal and private education loans. For the last few years, the Bureau has been examining student loan servicers using exam procedures released in 2013. The new procedures reflect the Bureau's new priorities based on experience in the market over those years. For example, we enhanced the sections related to servicer communications about income-driven repayment (IDR) plans, and relating to the IDR application process. We also enhanced the procedures relating to payment processing, and other communications with consumers like billing statements. The procedures detail how examiners in future student loan servicing exams will review student loan servicers' compliance with Federal consumer financial law, including the prohibition against unfair, deceptive, or abusive acts or practices.

5.1.3 Military Lending Act Examination Procedures

On September 30, 2016, the CFPB issued the procedures its examiners will use in identifying consumer harm and risks related to the Military Lending Act (MLA) rule.[61] The MLA rule was updated by the Department of the Defense in July 2015, and these exam procedures are based on the approved Federal Financial Institutions Examination Council (FFIEC) procedures. The exam procedures provide guidance to industry on what the CFPB will be looking for during reviews covering the amended regulation.

For most forms of credit subject to the updated MLA rule, creditors were required to comply with the amended regulation as of Oct. 3, 2016; credit card providers must comply with the new rule as of Oct. 3, 2017.

5.2 Recent CFPB Guidance

5.2.1 Amendment to the Service Provider Bulletin

Today, the CFPB is amending and reissuing its service provider bulletin as CFPB Compliance Bulletin and Policy Guidance 2016–02, Service Providers.[62] The amendment clarifies that the Bureau expects that ''the depth and formality of the entity's risk management program for service providers may vary depending upon the service being performed—its size, scope, complexity, importance, and potential for consumer harm—and the performance of the service provider in carrying out its activities in compliance with Federal consumer financial laws and regulations. While due diligence does not provide a shield against liability for actions by the service provider, using appropriate due diligence can reduce the risk that the service provider will commit violations for which the supervised entity may be responsible.''

Some entities may have interpreted the Bureau's 2012 bulletin to mean they had to use the same due diligence

[58] Additional information regarding this public enforcement action can be found in Supervisory Highlights, 2.6.1 (Winter 2016), available at *http://files.consumerfinance.gov/f/201603_cfpb_supervisory-highlights.pdf* and Supervisory Highlights (Summer 2014), *available at http://files.consumerfinance.gov/f/201409_cfpb_supervisory-highlights_auto-lending_summer-2014.pdf.*

[59] *See* the reverse mortgage servicing procedures, *available at files.consumerfinance.gov/f/documents/102016_cfpb_ReverseMortgageServicingExaminationProcedures.pdf.*

[60] *See* the student loan servicing procedures, *available at files.consumerfinance.gov/f/documents/102016_cfpb_EducationLoanServicingExamManualUpdate.pdf.*

[61] *See* the MLA examination procedures, *available at http://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/military-lending-act-examination-procedures/.*

[62] *See* CFPB, Compliance Bulletin 2016–02, *available at files.consumerfinance.gov/f/documents/102016_cfpb_OfficialGuidanceServiceProviderBulletin.pdf.*

requirements for all service providers no matter the risk for consumer harm. As a result, some small service providers have reported that entities have imposed the same due diligence requirements on them as for the largest service providers. The amendment clarifies that the risk management program may be tailored very appropriately to the size, market, and level of risk for consumer harm presented by the service provider.

This change is consistent with the guidance of the Federal prudential regulators and aligns the bulletin with the Bureau's approach that a risk management program should take into account the risk of consumer harm presented by the service being provided and supervised entities may tailor their due diligence based on the risk of consumer harm. Appropriate risk management programs would further the goal of ensuring that entities comply with Federal consumer financial laws and avoid consumer harm, including when using service providers.

6. Conclusion

The Bureau expects that regular publication of *Supervisory Highlights* will continue to aid CFPB-supervised entities in their efforts to comply with Federal consumer financial law. The report shares information regarding general supervisory and examination findings (without identifying specific institutions, except in the case of public enforcement actions), communicates operational changes to the program, and provides a convenient and easily accessible resource for information on the CFPB's guidance documents.

Dated: October 31, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–28094 Filed 11–21–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0194; Docket No. 2016–0053; Sequence 32]

Submission for OMB Review; Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representations

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding a new OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request for approval of an information collection requirement regarding Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representations. A notice was published in the **Federal Register** at 81 FR 33192 on May 25, 2016, as part of a proposed rule under FAR Case 2015–024. No public comments were received on the information collection.

DATES: Submit comments on or before December 22, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0194. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0194, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representations''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0194, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representations'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0194, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representations.

Instructions: Please submit comments only and cite ''Information Collection 9000–0194, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representations'', in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gray, Procurement Analyst, Office of Governmentwide Acquisition Policy, at telephone 703–795–6328, or via email to *charles.gray@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Public disclosure of Greenhouse Gas (GHG) emissions and reduction goals or targets has become standard practice in many industries, and companies are increasingly asking their own suppliers about their GHG management practices. Performing a GHG inventory provides insight into operations, spurs innovation, and helps identify opportunities for efficiency and savings that can result in both environmental and financial benefits. By asking suppliers whether or not they publicly report emissions and reduction targets, the Federal Government will have accurate, up-to-date information on its suppliers. An annual representation will promote transparency and demonstrate the Federal Government's commitment to reducing supply chain emissions. Furthermore, by promoting GHG management and emissions reductions in its supply chain, the Federal Government will encourage supplier innovation, greater efficiency, and cost savings, benefitting both the Government and suppliers and adding value to the procurement process.

This representation would be mandatory only for vendors who received $7.5 million or more in Federal contract awards in the preceding Federal fiscal year. The representation would be voluntary for all other vendors. Additionally, as long as the vendor's emissions are reported publicly—either by the entity itself or rolled up into the public emissions report of a parent company—the emissions would be considered publicly reported.

B. Annual Reporting Burden

Respondents: 5,500.
Responses per Respondent: 1.
Annual Responses: 5,500.
Hours Per Response: .25.
Total Burden Hours: 1,375.
Affected Public: Businesses or other for-profit and not for profit institutions.
Frequency: Annual.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper

performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite ''OMB Control No. 9000–0194, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representations'', in all correspondence.

Dated: November 16, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–28009 Filed 11–21–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Calendar Year 2017 TRICARE Young Adult Program Premium Update

AGENCY: Office of the Secretary of Defense, Department of Defense.

ACTION: Notice of Updated TRICARE Young Adult Premiums for Calendar Year 2017.

SUMMARY: This notice provides the updated TRICARE Young Adult program premiums for Calendar Year (CY) 2017.

DATES: The CY 2017 rates contained in this notice are effective for services on or after January 1, 2017.

ADDRESSES: Defense Health Agency, TRICARE Health Plan, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042–5101.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Ellis, (703) 681–0039.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** (FR) on May 29, 2013 (78 FR 32116–32121) sets forth rules to implement the TRICARE Young Adult (TYA) program as required by Title 10, United States Code, Section 1110b. Included in the final rule were provisions for updating the TYA premiums for each CY. By law, qualified young adult dependents are charged TYA premiums that represent the full government cost of providing such coverage.

The Defense Health Agency has updated the monthly premiums for CY 2017 as shown below:

MONTHLY TYA PREMIUMS FOR CY 2017

Type of coverage	Monthly rate
TRICARE Standard Plans	$216
TRICARE Prime Plans	319

The above premiums are effective for services rendered on or after January 1, 2017.

Dated: November 16, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–28071 Filed 11–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government, as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing: Patent Application No. 14/587,455 (Navy Case No. 103030): ADHESION IMPROVEMENT IVA MATEIRAL NANOSTRUCUTURING OR TEXTURIZING//Patent Application No. 15/077,352 (Navy Case No. 200332): MODIFYING THE SURFACE CHEMISTRY OF A MATERIAL//and Navy Case No. 200322: ADHESION IMPROVEMENT VIA MATERIAL NANOSTRUCTURING OR TEXTURIZING.

ADDRESSES: Requests for copies of the patents cited should be directed to Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001, Email *Christopher.Monsey@navy.mil,* telephone 812–854–4100.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: November 16, 2016.

C.D. Mora,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–28068 Filed 11–21–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Cultural Quotient Corporation

AGENCY: Department of the Navy; DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy. The Department of the Navy hereby gives notice of its intent to grant to Cultural Quotient Corporation, a revocable, nonassignable, partially exclusive license to practice in the United States, the Government-owned inventions described below: U.S. Patent Application 14/587,455 (Navy Case 103030): Published July 23, 2015, entitled ''ADHESION IMPROVEMENT VIA MATERIAL NANOSTRUCTURING OR TEXTURIZING''// U.S. Patent Application No. 15/077,352 (Navy Case 200332): Published July 14, 2016, entitled ''MODIFYING THE SURFACE CHEMISTRY OF A MATERIAL''// and Navy Case 200322, entitled ''ADHESION IMPROVEMENT VIA MATERIAL NANOSTRUCTURING OR TEXTURING—MEDICAL APPLICATIONS.''

DATES: Anyone wishing to object to the grant of this license has fifteen days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001, Email *Christopher.Monsey@navy.mil,* telephone 812–854–4100.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: November 16, 2016.

C.D. Mora,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–28067 Filed 11–21–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanics

AGENCY: White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the twelfth meeting of the President's Advisory Commission on Educational Excellence for Hispanics (Commission). The notice also describes the functions of the Commission. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

DATES: The President's Advisory Commission on Educational Excellence for Hispanics meeting will be held on Tuesday, December 6, 2016 from 9:00 a.m.–2:00 p.m. Eastern Standard Time.

ADDRESSES: National Education Association, Robert E. Chanin Auditorium, 1201 16th Street NW., Washington, DC 20036, 202–453–5529.

FOR FURTHER INFORMATION CONTACT: Emmanuel Caudillo, Senior Advisor, White House Initiative on Educational Excellence for Hispanics, 400 Maryland Ave. SW., Room 4W108, Washington, DC 20202; telephone: 202–401–1411.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanics Statutory Authority: The President's Advisory Commission on Educational Excellence for Hispanics (the Commission) is established by Executive Order 13555 (Oct. 19, 2010; continued on September 30, 2015 by Executive Order 13708). The Commission is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L. 92–463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Commission is to advise the President and the Secretary of Education on all matters pertaining to the education attainment of the Hispanic community.

The Commission shall advise the President and the Secretary in the following areas: (i) Developing, implementing, and coordinating educational programs and initiatives at the Department and other agencies to improve educational opportunities and outcomes for Hispanics of all ages; (ii) increasing the participation of the Hispanic community and Hispanic-Serving Institutions in the Department's programs and in education programs at other agencies; (iii) engaging the philanthropic, business, nonprofit, and education communities in a national dialogue regarding the mission and objectives of this order; (iv) establishing partnerships with public, private, philanthropic, and nonprofit stakeholders to meet the mission and policy objectives of this order.

Meeting Agenda

The open meeting will facilitate a discussion on the transition of Administration as it pertains to Hispanics and education related issues. The Commission members will provide recommendations for the Initiative's priorities for 2017.

Access to Records of the Meeting: The Department will post the official report of the meeting on the Commission's Web site 90 days after the meeting. Pursuant to the FACA, the public may also inspect the materials at 400 Maryland Avenue SW., Washington, DC, by emailing *Emmanuel.Caudillo@ed.gov* or by calling (202) 401–1411 to schedule an appointment.

Individuals who wish to attend the Commission meeting must RSVP by 12 noon EST, Friday, December 2nd, 2016, to *WHIEEH@ed.gov*.

An opportunity for public comment will be available on Tuesday, December 6, 2016, from 1:15 p.m. to 1:45 p.m., EST. Individuals who wish to provide comments will be allowed three minutes to speak. Members of the public can sign up to provide comments at the meeting via email at *WHIEEH@ed.gov* and also the day-of the meeting. It is first come, first serve. Those members of the public interested in submitting written comments may do so by submitting them to the attention of Emmanuel Caudillo, White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education, 400 Maryland Ave. SW., Room 4W108, Washington, DC 20202, by 5:00 p.m. EST Friday, December 2, 2016 or via email at *WHIEEH@ed.gov*.

Reasonable Accommodations: Individuals who will need accommodations in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify Emmanuel Caudillo, Senior Advisor, White House Initiative on Educational Excellence for Hispanics at 202–401–1411, no later than Friday, December 2nd, 2016. We will attempt to meet requests for such accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

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

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

Authority: Executive Order 13555; continued by Executive Order 13708.

Ted Mitchell,

Under Secretary, U.S. Department of Education.

[FR Doc. 2016–27992 Filed 11–21–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No. ED–2016–ICCD–0130]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; ED School Climate Surveys (EDSCLS) National Benchmark Study 2017 Partial Cancellation Change Request

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before December 22, 2016.

ADDRESSES: To access and review all the documents related to the information

collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0130. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: ED School Climate Surveys (EDSCLS) National Benchmark Study 2017 Partial Cancellation Change Request.

OMB Control Number: 1850–0923.

Type of Review: No material or non-substantive change to a currently approved collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 15,593.

Total Estimated Number of Annual Burden Hours: 10,967.

Abstract: The ED School Climate Surveys (EDSCLS) are a suite of survey instruments being developed for schools, districts, and states by the U.S. Department of Education's (ED) National Center for Education Statistics (NCES). This national effort extends current activities that measure school climate, including the state-level efforts of the Safe and Supportive Schools (S3) grantees, which were awarded funds in 2010 by the ED's Office of Safe and Healthy Students (OSHS) to improve school climate. Through the EDSCLS, schools nationwide will have access to survey instruments and a survey platform that will allow for the collection and reporting of school climate data across stakeholders at the local level. The surveys can be used to produce school-, district-, and state-level scores on various indicators of school climate from the perspectives of students, teachers, noninstructional school staff and principals, and parents and guardians. The 2017 national EDSCLS benchmark study data collection from a nationally representative sample of schools across the United States to create a national comparison point for users of EDSCLS was last approved in May 2016 (OMB# 1850–0923 v.4) with revisions to scope and timeline approved in July and September 2016 (OMB# 1850–0923 v.5–6). Data were to be collected from a nationally representative sample of 500 schools serving students in grades 5–12 to produce national school climate scores on the various topics covered by EDSCLS. The national statistics were to be released in the updated EDSCLS platform to provide a basis for comparison between data collected by schools and school systems and the national school climate. Because, to date the study's projected overall unweighted participation rate is far below the 50% response rate recommended by NCES Statistical Standards, NCES is requesting to cancel any further recruitment and the EDSCLS National Benchmark Study 2017 as soon as possible. NCES will still offer to conduct the EDSCLS survey in the schools that opted to participate in a universe sample of all of their school's eligible respondents.

Dated: November 16, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–28023 Filed 11–21–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0097]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Student Assistance General Provisions—Subpart E—Verification Student Aid Application Information

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 22, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0097. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information

collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Assistance General Provisions—Subpart E—Verification Student Aid Application Information.

OMB Control Number: 1845–0041.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals or Households; Private Sector.

Total Estimated Number of Annual Responses: 31,005,627.

Total Estimated Number of Annual Burden Hours: 5,011,254.

Abstract: This request is for a revision of the information collection supporting the policies and reporting requirements contained in Subpart E of Part 668—Verification and Updating of Student Aid Application Information. Sections 668.53, 668.54, 668.55, 668.56, 668.57, 668.59 and 668.61 contain information collection requirements (OMB control number 1845–0041). This subpart governs the verification and updating of the Free Application for Federal Student Aid used to calculate an applicant's Expected Family Contribution for purposes of determining an applicant's need for student financial assistance under Title IV of Higher Education Act of 1965, as amended. The collection of this documentation helps ensure that students (and parents in the case of PLUS loans) receive the correct amount of Title IV program assistance by providing accurate information to calculate an applicant's expected family contribution.

Dated: November 17, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–28113 Filed 11–21–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–013]

Agency Information Collection Activities; Comment Request; Annual Performance Reports for Title III, Title V, and Title VII Grantees

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 23, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0131. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jason Cottrell, 202–453–7530.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Annual Performance Reports for Title III, Title V, and Title VII Grantees.

OMB Control Number: 1840–0766.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 1,114.

Total Estimated Number of Annual Burden Hours: 23,390.

Abstract: Titles III, V, and VII of the Higher Education Act of 1965, as amended (HEA), provide discretionary and formula grant programs that make competitive awards to eligible institutions of higher education and organizations (Title III, Part E) to assist these institutions to expand their capacity to serve minority and low-income students. Grantees submit an annual performance report to demonstrate that substantial progress is being made towards meeting the objectives of their project.

Dated: November 17, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–28066 Filed 11–21–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision for Issuing a Presidential Permit to Minnesota Power

AGENCY: U.S. Department of Energy.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy (DOE) announces its decision to issue a Presidential permit to Minnesota Power, a regulated utility division of ALLETE, Inc. (Applicant), to construct, operate, maintain, and connect a new electric transmission line across the U.S./Canada border in northern Minnesota. The potential environmental impacts associated with the transmission line are analyzed in the *Great Northern Transmission Line Project Final Environmental Impact Statement* (DOE/EIS–0499). The transmission line would cross the U.S./Canada border in Roseau County, Minnesota and extend southeast approximately 220 miles to the proposed Iron Range 500-kilovolt (kV) Substation, located just east of the existing Blackberry Substation near Grand Rapids, Minnesota.

ADDRESSES: The Final Environmental Impact Statement (Final EIS) and this Record of Decision (ROD) are available on the DOE National Environmental Policy Act (NEPA) Web site at *http://energy.gov/nepa* and on the Great Northern Transmission Line (GNTL) Project EIS Web site at *http://www.greatnortherneis.org/*. The EIS Web site also includes a list of libraries in Minnesota where the Final EIS is available for review.

Electronic copies of the Final EIS and this ROD may be requested by contacting Dr. Julie A. Smith, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington DC 20585; by electronic mail to *Juliea.Smith@hq.doe.gov;* or by facsimile to 202–318–7761.

FOR FURTHER INFORMATION CONTACT: For further information on the GNTL Project EIS, contact Dr. Julie A. Smith at the addresses above, or at 202–586–7668. For general information on DOE's NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; by email to *askNEPA@hq.doe.gov;* or by facsimile to 202–586–7031.

SUPPLEMENTARY INFORMATION: The EIS was jointly prepared by DOE and the Minnesota Department of Commerce—Energy Environmental Review and Analysis (DOC–EERA), acting as state co-lead, in order to avoid duplication and to comply with both federal and state environmental review requirements. The St. Paul District of the U.S. Army Corps of Engineers (USACE), the U.S. Environmental Protection Agency (EPA) Region 5, the Twin Cities Field Office (Region 3) of the U.S. Fish and Wildlife Service (USFWS), and the Red Lake Band of Chippewa Indians, Minnesota were cooperating agencies in preparing the EIS for the GNTL Project.

Background

Executive Order (EO) 10485 (September 9, 1953), as amended by EO 12038 (February 7, 1978), requires that a Presidential permit be issued by DOE before electricity transmission facilities may be constructed, operated, maintained, or connected at the U.S. border. DOE may issue or amend a Presidential permit if it determines that the permit is in the public interest and after obtaining favorable recommendations from the U.S. Departments of State and Defense. In determining whether issuance of a Presidential permit for a proposed action is in the public interest, DOE considers the potential environmental impacts of the proposed project, the project's impact on electricity reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and any other factors that DOE considers relevant to the public interest.

On April 15, 2014, Minnesota Power (the Applicant) applied to DOE for a Presidential permit to construct, operate, maintain, and connect an approximately 220-mile, 500-kV overhead, single circuit, alternating current (AC) electric power transmission system from the Canadian Province of Manitoba to the proposed Iron Range 500-kV Substation, located just east of the existing Blackberry Substation near Grand Rapids, Minnesota.

On October 29, 2014, the Applicant submitted an amendment to its Presidential permit application, changing the location of the proposed international border crossing approximately 4.3 miles east to cross the U.S./Canada border in Roseau County, Minnesota at latitude 49°00′00.00″ N and longitude 95°54′50.49″ W, which is approximately 2.9 miles east of Highway 89 in Roseau County.

The GNTL Project would be located on a new 200-foot-wide right-of-way (ROW) with a wider ROW required for certain spans at angle and corner structures, for guyed structures, or where special design requirements are dictated by topography. As part of the GNTL Project, the Applicant is also proposing to construct associated facilities including the proposed Iron Range 500-kV Substation, 500-kV Series Compensation Station, and three regeneration stations with permanent and temporary access roads.

Consultation

Pursuant to Section 7 of the Endangered Species Act (ESA), DOE has consulted with USFWS regarding potential impacts on federally-listed threatened or endangered species in the area of the GNTL Project. On October 29, 2015, DOE sent USFWS a letter requesting initiation of formal Section 7 consultation under the Endangered Species Act and submitted a Biological Assessment (BA), prepared by DOE. On April 26, 2016, USFWS issued a Biological Opinion (BO) indicating that the GNTL Project: ''may affect, and is likely to adversely affect the northern long-eared bat (*Myotis septentrionalis*); may affect, but not likely to adversely affect gray wolf (*Canis lupus*), gray wolf critical habitat, and Canada lynx (*Lynx canadensis*);'' and would result in no effect to other federally listed species. The BO further found that the GNTL Project is not likely to jeopardize the continued existence of the northern long-eared bat. The Presidential permit requires the Applicant to comply with all practicable means to avoid or minimize environmental harm, as required by USFWS. The BA is included as Appendix R of the Final EIS, and the BO is available on the GNTL Project EIS Web site (*http://www.greatnortherneis.org*).

DOE initiated consultation with the Minnesota State Historic Preservation Office (SHPO) under Section 106 of the National Historic Preservation Act regarding potential impacts on historic properties and determined the undertaking has the potential to adversely affect historic properties listed in or eligible for the National Register of Historic Places. On November 2, 2016, a programmatic agreement (PA) between DOE, Advisory Council on Historic Preservation (ACHP), the Red Lake Band of Chippewa Indians, Minnesota, and Minnesota SHPO was executed. The PA requires the Applicant to prepare a Cultural Resources Management Plan, which will meet the survey, data collection, and mitigation measures necessary, as identified by Minnesota SHPO. The PA is available on the GNTL Project EIS Web site (*http://www.greatnortherneis.org*).

NEPA Review

On June 27, 2014, DOE issued a Notice of Intent (NOI) (79 FR 36493) to prepare an EIS for the GNTL Project and to conduct Public Scoping Meetings. The NOI also indicated that because the

GNTL Project would involve actions in floodplains and wetlands, the EIS would include a Floodplain and Wetland Assessment.

On June 26, 2015, DOE published a Notice of Availability (NOA) of the Draft EIS (80 FR 36795) that began a 45-day public review period. DOE held nine public hearings on the Draft EIS and received more than 200 comments. Concerns raised during the comment period were related to the following topics: The regulatory process/public involvement, purpose and need, project description/design, alternatives, human settlement, noise and vibration, air quality/greenhouse gases, socioeconomics, recreation and tourism, public health and safety, aesthetics, land use and ownership, cultural resources, wetlands and water quality, and biological resources. See Section 1.4.4.1 of the Final EIS for additional information regarding these comments. DOE considered all comments received on the Draft EIS in the preparation of the Final EIS. Comment letters and detailed responses are included in Appendix Y of the Final EIS. Throughout the EIS process, DOE worked with the cooperating agencies to ensure that potential impacts were appropriately addressed. EPA announced the availability of the Final EIS on November 6, 2015 (80 FR 68867).

Alternatives Considered

In the EIS, DOE analyzed the No Action Alternative and the Proposed Action of granting a Presidential permit to authorize the Applicant to construct, operate, maintain, and connect a 500-kV transmission line across the U.S./Canada border. Under the No Action Alternative, DOE would not issue a Presidential permit for the proposed GNTL Project and the transmission line would not be built. Under the Proposed Action of granting the Presidential permit (the DOE Preferred Alternative), the transmission line would cross the U.S./Canada border in Roseau County, Minnesota at latitude 49°00′00.00″ N and longitude 95°54′50.49″ W. During the public scoping process, commenters proposed five alternative international border crossings, four of which DOE determined should be included for detailed analysis in the EIS.

DOE's Presidential permit decision is solely for the international border crossing; the proposed construction, operation, maintenance, and connection of the portion of the transmission line within the United States is a ''connected action'' to DOE's Proposed Action. See 40 Code of Federal Regulations (CFR) 1508.25(a)(1). In addition to the international border crossing alternatives, the EIS analyzed the potential environmental impact associated with the Applicant's proposed route, the Applicant's alternative routes, and 22 alternative route segments and nine alignment modifications that were proposed by agencies and the public during scoping.

Analysis of Potential Environmental Impacts

The EIS analyzed potential environmental impacts associated with the alternatives for each of the following resource areas: Human settlement, public health and safety, land-based economies, archaeological and historic resources, natural environment, rare and unique natural resources, use of paralleling existing corridors, electrical system reliability, and cumulative impacts. The analysis of potential impacts of the alternatives is described in the Summary and Chapter 6 of the Final EIS. This analysis assumes the implementation of all Applicant-proposed measures to minimize adverse impacts (Table 2–2 of the Final EIS).

DOE prepared a Floodplain and Wetland Assessment and Floodplain Statement of Findings in accordance with DOE regulations, 10 CFR part 1022 (Compliance with Floodplain and Wetland Environmental Review Requirements). The DOE Floodplain and Wetland Assessment, which contains the statement of findings, is available on the DOE NEPA Web site (*http://energy.gove/nepa*) and the GNTL Project Web site (*http://greatnortherneis.org*). The assessment considered potential impacts to floodplains and wetlands. DOE concluded that the proposed international border crossing is not located in a 100-year floodplain. The MN PUC-approved Route Alternative for the electric power transmission line (a connected action to DOE's Presidential permit action) would cross 100-year floodplains that are too large to span. This would require construction and placement of transmission structures (towers) within floodplains. No FEMA-designated 100-year floodplain has been identified in the locations proposed for associated facilities. Current design details and Applicant-proposed mitigation measures would minimize potential impacts to floodplains and wetlands to the extent practicable. Potential impacts to floodplain and wetland resources from the GNTL Project would not result in subsequent impacts to human lives and property. Therefore, DOE finds that potential impacts to floodplains will be avoided to the maximum extent practicable, that appropriate measures to minimize adverse effects on human health and safety and the functions and values provided by floodplains would be taken, and that the project would comply with applicable floodplain protection standards.

Implementation of the No Action Alternative would not result in changes to existing conditions and is therefore, the environmentally preferable alternative.

Comments Received on the Final EIS

Comment letters regarding the Final EIS were submitted to DOE by the U.S. Department of the Interior (DOI) Office of Environmental Policy and Compliance and EPA on December 3, 2015. Comments received on the Final EIS are available on the Minnesota Public Utilities (MN PUC) Web site (*http://mn.gov/commerce/energyfacilities/Docket.html?Id=33847*) and the GNTL Project EIS Web site (*http://www.greatnortherneis.org*).

DOI Comment Letter

On December 3, 2015, DOI submitted a comment letter that indicated that the Final EIS did not adequately address impacts to USFWS Interest Lands or compensatory mitigation. At that time the MN PUC had not issued a Route Permit for the proposed GNTL Project and it was not clear if USFWS interest lands would be potentially impacted by the Project. The DOI comment letter further indicated that if impacts to USFWS Interest Lands occur, USFWS would consider compensatory mitigation mandatory before USFWS would grant a ROW permit. Because the designated route in the MN PUC-issued Route Permit crosses USFWS Interest land, a ROW permit from USFWS will be necessary. USFWS is conducting its own Environmental Assessment for that action using the Final EIS as a primary/major source of information to complete the USFWS analysis. However, DOE notes that the Applicant has adequately addressed the concerns articulated in the DOI comment letter related to impacts to USFWS Interest Lands and compensatory mitigation through the execution of a July 26, 2016, ''Memorandum of Understanding (MOU) for Conservation Measures for the Great Northern Transmission Line Project.'' The MOU can be found on the GNTL Project EIS Web site (*http://www.greatnortherneis.org*).

The December 3, 2015, DOI comment letter also indicated an appreciation that the Final EIS added a commitment that the Applicant would continue working with USFWS to determine which measures are appropriate for addressing potential impacts to migratory bird

species from the GNTL Project and that any avoidance, minimization, and conservation measures imposed by USFWS would be addressed in the ROD or Presidential permit. DOI reiterated in the comment letter that pursuant to EO 13186 and the ESA, USFWS considers all three elements (avoiding, minimizing, and restoring/enhancing) necessary to adequately mitigate for impacts to listed species and migratory bird habitat. Following the publication of the Final EIS in November 2015, the Applicant and USFWS engaged in discussion for both mandatory and negotiable mitigation opportunities. Compensatory mitigation agreements between the Applicant and USFWS have been developed as a part of the July 26, 2016, MOU discussed above. DOE conditioned its Presidential permit to require the Applicant to comply with all practicable means to avoid or minimize environmental harm as required by USFWS.

EPA Comment Letter

The December 3, 2015, EPA comment letter expressed an appreciation that the Final EIS incorporated additional information, analysis, clarification, and/or discussion regarding cultural resources, tribal consultation, and inclusion of a National Historic Preservation Act Section 106 draft PA. DOE notes that consultation under Section 106 of the National Historic Preservation Act has been completed and a PA between DOE, the ACHP, Red Lake Band of Chippewa Indians, Minnesota, and Minnesota SHPO was executed on November 2, 2016. The PA is available on the GNTL Project EIS Web site (*http://www.greatnortherneis.org*). The EPA comment letter also expressed an appreciation that the Final EIS incorporated estimates of construction emissions of criteria pollutants, CO_2, and greenhouse gases (this information is provided in Appendix W of the Final EIS).

The December 3, 2015, EPA comment letter indicated that the Final EIS did not identify the Applicant's proposed locations for access roads, laydown areas, stringing areas, fly-in sites, and potential pole locations along with their potential resources impacts. DOE notes that these detailed project components are not determined at this point in the development of the GNTL Project, and that the Final EIS discloses the potential nature of the (mostly temporary) impacts to resources such as wetlands and forests that may be expected from the construction and use of such locations. Further, the BO indicates a commitment that the Applicant will work with USFWS to avoid, minimize, and mitigate potential impacts from the proposed GNTL Project once the necessary details are known. The DOE Presidential permit conditions require the implementation of all avoidance, minimization, and mitigation measures identified, not only in the Final EIS, but also in the Biological Opinion. The EPA comment letter also acknowledges the right of EPA to further review and comment on the GNTL Project during the USACE Clean Water Act Section 404 permitting process.

The December 3, 2015, EPA comment letter raised concerns regarding resource impacts and suggested the ROD include additional information to help ensure that adequate safeguards and mitigation measures are in place to fully protect the environment. The following is a summary of EPA recommendations from the agency's December 3, 2015, comment letter:

- The ROD should include the MN PUC Route Permit for the GNTL Project. DOE notes that the MN PUC Route Permit is available on the MN PUC Web site (*http://mn.gov/commerce/energyfacilities/Docket.html?Id=33847*), and the GNTL Project EIS Web site (*http://www.greatnortherneis.org*).
- The ROD should identify the plans, mitigation measures, and state and federal agencies' requirements that the MN PUC Route Permit requires the Applicant to develop and undertake, such as an Avian Mitigation Plan, Vegetation Management Plan (including control of invasive/noxious plant species), Erosion and Sediment Control Plan, and Stormwater Pollution Prevention Plan. DOE notes that development of these plans generally occurs during the permitting process and is not part of a Final EIS. The MN PUC Route Permit for the GNTL Project identifies permit conditions, including the development of the various plans referenced by the EPA. The MN PUC Route Permit also identifies the appropriate agencies the Applicant will need to coordinate with to satisfy these permit conditions. The MN PUC Route Permit is available on the MN PUC Web site (*http://mn.gov/commerce/energyfacilities/Docket.html?Id=33847*), and the GNTL Project EIS Web site (*http://www.greatnortherneis.org*).
- The ROD should disclose why a particular plan and/or mitigation measure identified in the Final EIS is not a MN PUC Route Permit requirement. DOE notes that the MN PUC Route Permit requires adherence to mitigation measures in the Final EIS.
- A third party independent environmental inspector, such as the Minnesota Department of Natural Resources (MnDNR), should be utilized. The ROD should disclose whether or not an inspector will be used and if this is a requirement in the MN PUC Route Permit. DOE notes that the MN PUC Route Permit conditions indicate that the Applicant shall provide a dedicated independent environmental inspector to oversee the construction process and to monitor compliance with the Avian Mitigation Plan, Vegetation Management Plan, and requirements of the Construction Environmental Control Plan and all other environmental permits.
- The Applicant should pursue opportunities for emission reduction strategies during construction. The ROD should identify additional air quality measures that the Applicant proposed to utilize and/or MN PUC intends to include as conditions/requirements in the Route Permit. DOE notes that employment of additional emission reduction strategies during construction of the GNTL Project will be dependent on the Applicant to implement, as the GNTL Project is not expected to result in long-term adverse criteria pollutant or climate change and greenhouse gas emissions. Information on construction emissions of criteria pollutants, CO_2, and greenhouse gases is provided in Appendix W of the Final EIS.
- The Applicant should undertake voluntary forest compensation for forest impacts that do not require compensation under existing federal and/or state regulations. The ROD should identify whether or not the Applicant will conduct voluntary forest compensation and the amount, location, and timing, if applicable. DOE notes that compensatory mitigation agreements between the Applicant and USFWS have been developed, as referenced in the February 12, 2016, DOI letter.
- The ROD should include the executed Section 106 PA and/or provide a direct link to the document. DOE notes that consultation under Section 106 of the National Historic Preservation Act is summarized under ''Consultation'' in this ROD. The PA is available on the GNTL Project EIS Web site (*http://www.greatnortherneis.org*).

DOE ascertains that all issues or concerns identified in the December 3, 2015, EPA and DOI comment letters, which are summarized above, have been addressed or are currently being addressed, principally through continued consultation between the Applicant and USFWS.

Decision

DOE has decided to issue Presidential permit DOE PP–398 to authorize the

Applicant to construct, operate, maintain, and connect a 500-kV transmission line across the U.S./Canada border. The Presidential permit includes a condition requiring the implementation of the Applicant-proposed avoidance, minimization, and mitigation measures described in the Final EIS, Biological Opinion, and the Section 106 Programmatic Agreement, all of which are included as conditions to the MN PUC Route Permit.

On April 11 2016, MN PUC issued a Route Permit to the Applicant for the proposed Blue Route, in combination with the Effie and Trout Lake Variations, as the designated route. The designated route is described as follows:

The international border crossing at the U.S./Canadian border is located at latitude 49°00′00.00″ N and longitude 95°54′50.49″ W, which is approximately 2.9 miles east of Minnesota State Highway 89 in Roseau County. From the international border, the designated route proceeds south 2.5 miles to 390th Street, approximately 0.5 miles east of 320th Avenue. The designated route then travels due east 6.5 miles to State Highway 310 before heading east-southeast approximately 12 miles to a point 0.5 miles west of CSAH 13/510th Avenue. From there, the designated route turns east and travels 2.3 miles to join the existing Minnkota Power Cooperative 230-kV transmission line. The designated route parallels the existing Minnkota 230-kV transmission line southeast for 1.8 miles where it meets the existing Xcel 500-kV transmission line. Beginning at 0.1 mile north of U.S. Highway 11, where the existing transmission lines intersect, the designated route parallels the existing Xcel 500-kV transmission line generally south and east for approximately 36.2 miles.

The designated route leaves the Xcel 500-kV transmission line approximately 1 mile south of the intersection of 19th Street SW and 65th Avenue SW in Lake of the Woods County. The designated route then proceeds east for 5.9 miles before turning northeast for 1.4 miles to rejoin the existing Minnkota Power 230-kV transmission line just west of its intersection with Pitt Grade Road NW. The designated route then parallels this existing 230-kV transmission line in an easterly direction for 31 miles to a point 0.3 miles west of Township Road 118 in Koochiching County. The designated route then proceeds south-southeast for 8.3 miles to Sandsmark Trail, 0.3 miles north of CSAH 32. The designated route travels south for 1.8 miles and then continues southeast for 21.4 miles where it intersects State Highway 71, approximately 4.2 miles northeast of Big Falls. The designated route continues an additional 9.6 miles to the southeast where it rejoins the existing Minnkota 230-kV transmission line and follows this existing transmission line south for 12.4 miles.

At this point the existing Minnkota 230-kV and Xcel 500-kV transmission lines meet and begin running parallel to the east and then south. The designated route parallels these existing transmission lines east and then south for 39.9 miles to a point 0.7 miles west of State Highway 65, 0.1 miles north of the Prairie River. At this point the existing transmission lines turn southeast while the designated route turns south-southwest and continues for 7.8 miles to approximately 0.6 miles west of Fork Lake Road and Harrison Lake and approximately 0.6 miles northeast of Kennedy Lake. The designated route then runs west-southwest for 2.1 miles before turning due south toward Grass Lake. The designated route travels south for approximately 5 miles where it crosses CSAH 56 and CSAH 8 before reaching a point just south of its crossing of CSAH 57, approximately 0.6 miles west of County Road 58. The designated route turns southwest again for 3.7 miles before turning south for 5.2 miles where it passes between Little Diamond Lake and Big Diamond Lake and meets U.S. Highway 169. From U.S. Highway 169, the designated route heads south-southeast for 1.6 miles. At the Swan River, the designated route heads south for 4.2 miles where it meets and generally parallels an existing Minnesota Power 230-kV transmission line east for 1.2 miles to the proposed Iron Range Substation.

The MN PUC Route Permit includes associated maps and conditions of the Route Permit. The MN PUC Route Permit is available on the MN PUC Web site (*http://mn.gov/commerce/energyfacilities/Docket.html?Id=33847*), and the GNTL Project EIS Web site (*http://www.greatnortherneis.org*).

Basis for Decision

DOE determined that the Proposed Action is in the public interest. The decision by DOE to grant a Presidential permit is based on consideration of the potential environmental impacts, impacts on the reliability of the U.S. electric power supply system under normal and contingency conditions, and the favorable recommendations of the U.S. Departments of State and Defense provided, respectively, in July and August of 2015.

DOE has determined that the proposed international electric transmission line would not have an adverse impact on the reliability of the U.S. electric power supply system. In reaching this determination, DOE considered the operation of the electrical grid with a specified maximum amount of electric power transmitted over the proposed transmission line. DOE reviewed the System Impact Study (MH-US TSR Sensitivity Analysis) conducted by the Midcontinent Independent System Operator (MISO) on the new transmission for the MH-US south bound (summer) and US-MH north bound (winter) transmission service requests (TSRs) on the proposed 500-kV GNTL—Dorsey-Iron Range 500-kV transmission line, from the Minnesota-Manitoba border to a new Iron Range 500-kV substation near Grand Rapids, Minnesota. In addition, DOE reviewed the GNTL Stability Analysis prepared by Siemens PTI, the Short Circuit Study prepared by Power Engineers, and the New Tie Line Loop Flow Impact study report submitted by Minnesota Power. These studies are available on the GNTL Project EIS Web site (*http://www.greatnortherneis.org*). DOE also considered MISO's interconnection standards and its restrictions on any requested transmission service to and from the proposed interconnection.

Mitigation

All practicable means to avoid or minimize environmental harm from the Proposed Action have been, or will be, adopted. Applicant-proposed measures to avoid and minimize adverse impacts are described in Section 2.13 (Table 2–2) of the Final EIS, and the Applicant will be responsible for implementing these avoidance and minimization measures. Additional measures will be required through the permitting process and as a result of ongoing consultations. The Presidential permit is conditioned on the Applicant's compliance with all commitments and requirements outlined in the BA, BO, PA, Final EIS, and MN PUC Route Permit.

Issued in Washington, DC, on November 15, 2016.

Meghan Conklin,

Deputy Assistant Secretary, Transmission Permitting and Technical Assistance, Office of Electricity Delivery & Energy Reliability.

[FR Doc. 2016–28091 Filed 11–21–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2706–001.
Applicants: Idaho Power Company.
Description: Compliance filing: Amendment to LGIA/SGIA Order Nos. 827 and 828 Combined Compliance Filing to be effective 11/30/2016.
Filed Date: 11/15/16.
Accession Number: 20161115–5095.
Comments Due: 5 p.m. ET 12/6/16.

Docket Numbers: ER17–33–001.
Applicants: Breadbasket LLC.
Description: Tariff Amendment: Amend Cancellation MBR Filing to be effective 10/6/2016.
Filed Date: 11/15/16.
Accession Number: 20161115–5051.
Comments Due: 5 p.m. ET 12/6/16.

Docket Numbers: ER17–228–001.
Applicants: King Forest Industries, Inc.
Description: Tariff Amendment: Amended MBR Application to be effective 12/1/2016.
Filed Date: 11/15/16.
Accession Number: 20161115–5086.
Comments Due: 5 p.m. ET 12/6/16.

Docket Numbers: ER17–351–000.
Applicants: American Falls Solar, LLC.
Description: Baseline eTariff Filing: American Falls Solar LLC MBR Application to be effective 1/5/2017.
Filed Date: 11/15/16.
Accession Number: 20161115–5057.
Docket Numbers: ER17–352–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NYISO NYSEG Greenidge joint filing LGIA 2305 to be effective 10/31/2016.
Filed Date: 11/15/16.
Accession Number: 20161115–5110.
Comments Due: 5 p.m. ET 12/6/16.

Docket Numbers: ER17–353–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Bylaws Revisions to Expand Strategic Planning Committee and Oversight Committee to be effective 1/14/2017.
Filed Date: 11/15/16.
Accession Number: 20161115–5120.
Comments Due: 5 p.m. ET 12/6/16.

Docket Numbers: ER17–354–000.
Applicants: American Falls Solar II, LLC.
Description: Baseline eTariff Filing: American Falls Solar II MBR Application Filing to be effective 1/5/2017.
Filed Date: 11/15/16.
Accession Number: 20161115–5129.
Comments Due: 5 p.m. ET 12/6/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 15, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–28079 Filed 11–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2234–001.
Applicants: EF Kenilworth LLC.
Description: Report Filing: Supplement to Refund Report to be effective N/A.
Filed Date: 11/16/16.
Accession Number: 20161116–5108.
Comments Due: 5 p.m. ET 12/7/16.

Docket Numbers: ER17–358–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Enhanced Combined Cycle Tariff Revisions to be effective 3/1/2017.
Filed Date: 11/16/16.
Accession Number: 20161116–5026.
Comments Due: 5 p.m. ET 12/7/16.

Docket Numbers: ER17–359–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3286; Queue No. X3–001 to be effective 1/13/2017.
Filed Date: 11/16/16.
Accession Number: 20161116–5065.
Comments Due: 5 p.m. ET 12/7/16.

Docket Numbers: ER17–360–000.
Applicants: Rio Bravo Solar I, LLC.
Description: Baseline eTariff Filing: MBR Application and Tariff to be effective 11/17/2016.
Filed Date: 11/16/16.
Accession Number: 20161116–5092.
Comments Due: 5 p.m. ET 12/7/16.

Docket Numbers: ER17–361–000.
Applicants: Pumpjack Solar I, LLC.
Description: Baseline eTariff Filing: MBR Application and Tariff to be effective 11/17/2016.
Filed Date: 11/16/16.
Accession Number: 20161116–5098.
Comments Due: 5 p.m. ET 12/7/16.

Docket Numbers: ER17–362–000.
Applicants: Rio Bravo Solar II, LLC.
Description: Baseline eTariff Filing: MBR Application and Tariff to be effective 11/17/2016.
Filed Date: 11/16/16.
Accession Number: 20161116–5099.
Comments Due: 5 p.m. ET 12/7/16.

Docket Numbers: ER17–363–000.
Applicants: Rio Bravo Solar I, LLC.
Description: § 205(d) Rate Filing: Co-Tenancy and Shared Facilities Agreement to be effective 11/17/2016.
Filed Date: 11/16/16.
Accession Number: 20161116–5100.
Comments Due: 5 p.m. ET 12/7/16.

Docket Numbers: ER17–364–000.
Applicants: Rio Bravo Solar II, LLC.
Description: § 205(d) Rate Filing: Co-Tenancy and Shared Facilities Agreement to be effective 11/17/2016.
Filed Date: 11/16/16.
Accession Number: 20161116–5101.
Comments Due: 5 p.m. ET 12/7/16.

Docket Numbers: ER17–365–000.
Applicants: Pumpjack Solar I, LLC.
Description: § 205(d) Rate Filing: Pumpjack-Rio Bravo SFA RS No. 1 to be effective 11/17/2016.
Filed Date: 11/16/16.
Accession Number: 20161116–5104.
Comments Due: 5 p.m. ET 12/7/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–28106 Filed 11–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC17–33–000.
Applicants: Solar Star California XLI, LLC, Golden Fields Solar I, LLC, NES Rosamond 1S, LLC, NES Rosamond 2T, LLC.
Description: Joint Application for Authorization for Disposition of Jurisdictional Facilities and Requests for Waivers, Confidential Treatment, and Expedited Action of Solar Star California XLI, LLC, *et al.*
Filed Date: 11/15/16.
Accession Number: 20161115–5178.
Comments Due: 5 p.m. ET 12/6/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–355–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) Rate Filing: Filing of a CIAC with Norhtern States Power Company to be effective 1/16/2017.
Filed Date: 11/15/16.
Accession Number: 20161115–5144.
Comments Due: 5 p.m. ET 12/6/16.

Docket Numbers: ER17–356–000.
Applicants: MPower Energy NJ LLC.
Description: Baseline eTariff Filing: MPOWER ENERGY NJ LLC to be effective 12/16/2016.
Filed Date: 11/16/16.
Accession Number: 20161116–5001.
Comments Due: 5 p.m. ET 12/7/16.

Docket Numbers: ER17–357–000.
Applicants: MPower Energy.
Description: Baseline eTariff Filing: MPOWER ENERGY LLC to be effective 12/16/2016.
Filed Date: 11/16/16.
Accession Number: 20161116–5002.
Comments Due: 5 p.m. ET 12/7/16.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF16–904–000.
Applicants: HMV Minster LLC.
Description: Refund Report of HMV Minster LLC.
Filed Date: 11/15/16.
Accession Number: 20161115–5174.
Comments Due: 5 p.m. ET 12/6/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 16, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–28105 Filed 11–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP17–163–000.
Applicants: Equitrans, L.P.
Description: Compliance filing Notice Regarding Non-Jurisdictional Gathering Facilities (Ryerson CS).
Filed Date: 11/8/16.
Accession Number: 20161108–5029.
Comments Due: 5 p.m. ET 11/21/16.

Docket Numbers: RP17–164–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) Rate Filing: 2016 Reservation Charge Credits to be effective 12/9/2016.
Filed Date: 11/8/16.
Accession Number: 20161108–5085.
Comments Due: 5 p.m. ET 11/21/16.

Docket Numbers: RP17–165–000.
Applicants: Osprey Energy Center, LLC, Duke Energy Florida, LLC.
Description: Joint Petition for Limited Waiver of Osprey Energy Center, LLC and Duke Energy Florida, LLC.
Filed Date: 11/8/16.
Accession Number: 20161108–5107.
Comments Due: 5 p.m. ET 11/21/16.

Docket Numbers: RP17–166–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: Compliance filing Settlement Implementation Compliance Filing to be effective 1/1/2017.
Filed Date: 11/9/16.
Accession Number: 20161109–5093.
Comments Due: 5 p.m. ET 11/21/16.

Docket Numbers: RP17–167–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing (Mexicana de Cobre Nov 2016) to be effective 11/11/2016.
Filed Date: 11/9/16.
Accession Number: 20161109–5132.
Comments Due: 5 p.m. ET 11/21/16.

Docket Numbers: RP17–168–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: § 4(d) Rate Filing: Revision to Rate Schedule GPS to be effective 12/11/2016.
Filed Date: 11/10/16.
Accession Number: 20161110–5036.
Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: RP17–169–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: City of Pickneyville to be effective 12/1/2016.
Filed Date: 11/10/16.
Accession Number: 20161110–5134.
Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: RP17–170–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: City of Perryville, MO to be effective 12/1/2016.
Filed Date: 11/10/16.
Accession Number: 20161110–5138.
Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: RP17–171–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 11/10/16 Negotiated Rates—Con Edison Energy Inc. (RTS) Correction 10/18/16 to be effective 11/1/2016.
Filed Date: 11/10/16.
Accession Number: 20161110–5179.
Comments Due: 5 p.m. ET 11/22/16.

Docket Numbers: RP17–172–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: AIM W. Roxbury Lat—Boston Gas Non-Conforming contract 510807 to be effective 12/1/2016.

Filed Date: 11/14/16.
Accession Number: 20161114–5003.
Comments Due: 5 p.m. ET 11/28/16.

Docket Numbers: RP17–173–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Bump Policy Clarification to be effective 12/15/2016.
Filed Date: 11/14/16.
Accession Number: 20161114–5060.
Comments Due: 5 p.m. ET 11/28/16.

Docket Numbers: RP17–174–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Update Non-Conforming and Negotiated Rate Agreements—Nov. 2016 to be effective 11/15/2016.
Filed Date: 11/14/16.
Accession Number: 20161114–5118.
Comments Due: 5 p.m. ET 11/28/16.

Docket Numbers: RP17–175–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Revised Negotiated Rate PAL Agreements—Wisconsin Electric Power Company to be effective 11/15/2016.
Filed Date: 11/14/16.
Accession Number: 20161114–5120.
Comments Due: 5 p.m. ET 11/28/16.

Docket Numbers: RP17–176–000.
Applicants: CenterPoint Energy Services, Inc., Atmos Energy Marketing LLC.
Description: Joint Petition for Temporary Waiver and Request for Expedited Action and a Shortened Notice Period of CenterPoint Energy Services, Inc., et. al.
Filed Date: 11/10/16.
Accession Number: 20161110–5223.
Comments Due: 5 p.m. ET 11/17/16.

Docket Numbers: RP17–177–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2017 Non-Leap Year Rates to be effective 1/1/2017.
Filed Date: 11/14/16.
Accession Number: 20161114–5276.
Comments Due: 5 p.m. ET 11/28/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–1057–001.
Applicants: MoGas Pipeline LLC.
Description: Compliance filing MoGas Compliance Filing to be effective 4/1/2016.
Filed Date: 11/9/16.
Accession Number: 20161109–5044.
Comments Due: 5 p.m. ET 11/21/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated November 15, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–28080 Filed 11–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC17–23–000.
Applicants: Oncor Electric Delivery Company LLC, NextEra Energy, Inc., EFH Merger Co., LLC, WSS Acquisition Company, T & D Equity Acquisition, LLC.
Description: Amendment to November 1, 2016 Joint Application for Approval of the Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act of Oncor Electric Delivery Company LLC, et. al.
Filed Date: 11/14/16.
Accession Number: 20161114–5392.
Comments Due: 5 p.m. ET 12/5/16.

Docket Numbers: EC17–31–000.
Applicants: Deerfield Wind Energy, LLC.
Description: Authorization Under Section 203 of the FPA for the Disposition of Jurisdictional Facilities, and Request for Expedited Consideration and Confidential Treatment of Deerfield Wind Energy, LLC, et al.
Filed Date: 11/14/16.
Accession Number: 20161114–5386.
Comments Due: 5 p.m. ET 12/5/16.

Docket Numbers: EC17–32–000.
Applicants: American Illuminating Company, LLC.
Description: Application for Authorization under Section 203 of the FPA of American Illuminating Company, LLC.
Filed Date: 11/14/16.
Accession Number: 20161114–5389.
Comments Due: 5 p.m. ET 12/5/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG17–29–000.
Applicants: Rocksprings Val Verde Wind LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator of Rocksprings Val Verde Wind LLC.
Filed Date: 11/14/16.
Accession Number: 20161114–5024.
Comments Due: 5 p.m. ET 12/5/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1910–013*; ER10–1911–013.*
Applicants: Duquesne Light Company, Duquesne Power, LLC.
Description: Notice of Change in Status of Duquesne Light Company and Duquesne Power, LLC.
Filed Date: 11/14/16.
Accession Number: 20161114–5399.
Comments Due: 5 p.m. ET 12/5/16.

Docket Numbers: ER10–2805–006*; ER10–2289–008; ER10–2564–008; ER10–2600–008*
Applicants: Central Hudson Gas & Electric Corporation, Tucson Electric Power Company, UNS Electric, Inc., UniSource Energy Development Company.
Description: Notice of Non-Material Change in Status of Fortis MBR Entities.
Filed Date: 11/14/16.
Accession Number: 20161114–5381.
Comments Due: 5 p.m. ET 12/5/16.

Docket Numbers: ER16–2703–000.
Applicants: Deerfield Wind Energy, LLC.
Description: Second Supplement to September 29, 2016 Deerfield Wind Energy, LLC tariff filing.
Filed Date: 11/14/16.
Accession Number: 20161114–5380.
Comments Due: 5 p.m. ET 11/25/16.

Docket Numbers: ER17–350–000.
Applicants: ITC Lake Erie Connector, LLC.
Description: Request for Order Confirming Negotiated Rate Authority of ITC Lake Erie Connector LLC.
Filed Date: 11/14/16.
Accession Number: 20161114–5385.
Comments Due: 5 p.m. ET 12/5/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 15, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–28078 Filed 11–21–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0618; FRL–9954–80]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations and Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel their registrations of certain products containing the active ingredients dimethomorph, metiram, profenofos, propoxur, and sodium acifluorfen and to amend certain captan and propoxur product registrations to terminate one or more uses. For captan, if granted, the requests would terminate the last U.S. registered use on dichondra, grasses (lawn seed beds), turf (golf courses and sod farms), and turf grasses (golf courses and ornamentals in non-pastured areas). For propoxur, if granted, the requests would terminate the last indoor use of aerosol, spray, and liquid formulations, and terminate the last uses in food handling establishments and for indoor crack and crevice. The requests, if granted, would not cancel the last captan, dimethomorph, propoxur, and sodium acifluorfen products registered for use in the United States. The requests, if granted, would cancel the last profenofos and metiram products registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the affected registrations have been cancelled/use terminated only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before December 22, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0618, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Brittany Pruitt, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0289; email address: *pruitt.brittany@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background on the Receipt of Requests To Cancel and/or Amend Registrations To Terminate Certain Uses

This notice announces receipt by EPA of requests from ABC Compounding Company, Inc.; Albaugh, LLC; Bonide Products, Inc.; BASF Corporation; Wellmark International; FMC Corporation; Summit Chemical Company; Sungro Products, LLC.; Syngenta Crop Protection; and Whitmore Micro-Gen to cancel certain product registrations or amend registrations to terminate certain uses of certain product registrations.

Captan is a broad spectrum fungicide registered for use on fruit and nut trees, grapes, berries, vegetables, corn, soybeans, cereal grains, and forage crops. In addition, captan is registered for use as a seed and seed piece treatment, as a preplant root dip, and as a post-harvest fruit dip. Captan is also registered for use on ornamentals and turf. In a letter dated October 5, 2016, Albaugh requested that EPA amend the technical and product registrations listed in Table 2 of Unit III of this document to terminate certain uses, including turf. If granted, the requests will result in termination of the last U.S. registered use of captan on dichondra, grasses (lawn seed beds), turf (golf courses and sod farms), and turf grasses (golf courses and ornamentals in non-pastured areas).

Dimethomorph is a systemic fungicide registered for use to control downy mildew, late blight, and crown

and root rot on plants. It is a cinnamic acid derivative and a member of the morpholine chemical family. Dimethomorph is used on numerous agricultural crops including leafy vegetables, bulb vegetables, fruiting vegetables, potatoes, tobacco, and tomatoes. In a letter dated March 8, 2016, BASF Corporation requested that EPA cancel five product registrations containing dimethomorph, identified in Table 1 of Unit III. If granted, this request will not result in cancellation of the last dimethomorph pesticide products registered for use in the United States.

Metiram is a broad spectrum fungicide that belongs to the ethylene bisdithiocarbamate (EBDC) group of fungicides. Metiram is registered for use to control scab and rust diseases on apples, early and late blight diseases on potatoes, and anthracnose disease on leather leaf ferns. In letters dated September 28, 2016 and October 24, 2016, BASF Corporation requested that EPA cancel three metiram product registrations. These registrations are identified in Table 1 of Unit III. If granted, this request will result in the cancellation of the last metiram pesticide products registered for use in the United States.

Profenofos is an organophosphate insecticide registered for use on cotton. The main target pests for profenofos are lepidopterans; however, other alternatives are available. In a letter dated September 28, 2016, Syngenta Corporation requested that EPA cancel two product registrations containing profenofos. These registrations are identified in Table 1 of Unit III. If granted, this request will result in cancellation of the last profenofos pesticide products registered for use in the United States.

Propoxur is an insecticide registered for use to kill a variety of insects including crickets, ants, cockroaches, silverfish and other pests. It is registered for use in and around industrial, institutional, commercial, and residential facilities. The propoxur preliminary human health risk assessment (*Propoxur: Human Health Preliminary Risk Assessment for Registration Review,* May 22, 2015) identified dietary and residential post-application risks of concern for indoor crack and crevice applications (liquid and aerosol formulations) in institutional settings (*i.e.,* hospitals, dormitories) and in food handling establishments (FHE). The technical registrant, Wellmark International, voluntarily requested amendments to terminate these uses to mitigate the risks of concern. The technical registrations were amended and the uses were terminated effective September 22, 2015 (80 FR 57179; FRL–9933–58). Subsequently, in letters dated April 11, 2016, April 12, 2016, April 27, 2016, May 6, 2016, and July 22, 2016, ABC Compounding Company, Inc., Wellmark International, FMC Corporation, Summit Chemical Company, Sungro Products, LLC., and Whitmore Micro-Gen requested that EPA cancel certain propoxur registrations and/or amend to terminate certain uses of propoxur pesticide product registrations identified in Tables 1 and 2 of Unit III. Specifically, the registrants requested that the following uses and formulations be terminated: all indoor aerosol, spray, and liquid formulations of propoxur; use in food handling establishments; and indoor crack and crevice use. If granted, these requests will result in cancellation of and/or amendment to terminate these uses of propoxur pesticide products registered in the United States. FMC Corporation, an end-use propoxur registrant, requested voluntary cancellation of their end-use propoxur product registered for the terminated uses with an effective cancellation date of December 31, 2017. EPA anticipates granting an effective cancellation date of December 31, 2017 for the propoxur product registrations identified in Tables 1 of Unit III, which will allow the registrants to sell and distribute existing stocks of these products until December 31, 2017. Thereafter, registrants will be prohibited from selling or distributing the propoxur products identified in Table 1 of Unit III., except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Sodium acifluorfen is a selective, diphenyl ether herbicide and a light dependent peroxidizing herbicide (LDPH) registered for use for post-emergent weed control on soybeans, peanuts, rice, and strawberries. In a letter dated February 26, 2016, Bonide Products Inc. requested that EPA cancel one product registration containing sodium acifluorfen identified in Table 1 of Unit III. If granted, this request will cancel the last sodium acifluorfen pesticide product registered for residential use in the United States.

III. What action is the agency taking?

This notice announces receipt by EPA of requests from registrants to cancel certain product registrations of dimethomorph, metiram, profenofos, propoxur, and sodium acifluorfen and to amend certain captan and propoxur product registrations to terminate one or more uses. The affected products and the registrants making the requests are identified in Tables 1–3 of this unit.

Unless requests are withdrawn by the registrants or if the Agency determines that there are substantive comments that warrant further review of these requests, EPA intends to issue an order canceling the affected registrations and amending to terminate certain uses of the affected registrations for which the Agency received use termination requests.

TABLE 1—DIMETHOMORPH, METIRAM, PROFENOFOS, PROPOXUR AND SODIUM ACIFLUORFEN PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Company
4–433	Bonide Kleen up Grass and Weed Killer, Ready to Use	Bonide Products Inc.
100–598	Profenofos Technical	Syngenta Crop Protection.
100–699	Curacron 8E	Syngenta Crop Protection.
279–3395	CB Invader with Propoxur	FMC Corporation.
241–383	Acrobat MZ Fungicide	BASF Corporation.
241–395	Acrobat MZ WDG Fungicide	BASF Corporation.
241–410	Acrobat 50 WP Fungicide	BASF Corporation.
241–411	Stature MZ Fungicide	BASF Corporation.
241–419	Stature DM Fungicide	BASF Corporation.
3862–135	Drop Dead	ABC Compounding Company, Inc.
6218–24	Permacide Plus	Summit Chemical Company.
7969–105	Polyram 80 DF	BASF Corporation.
7969–321	Cabrio Plus Fungicide	BASF Corporation.
11556–33	Sendran Technical	Bayer Healthcare, LLC.

TABLE 1—DIMETHOMORPH, METIRAM, PROFENOFOS, PROPOXUR AND SODIUM ACIFLUORFEN PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product name	Company
89459–39	Prentox Prenbay 1.5 BC	Central Garden & Pet Company.
89459–28	Prentox Prenbay 1% Oil	Central Garden & Pet Company
FL980001	Polyram 80 DF	BASF Corporation.

TABLE 2—CAPTAN AND PROPOXUR PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Company	Uses to be terminated
42750–230	Captan Technical	Albaugh LLC	Turf (golf courses and sod farms), seed beds and greenhouse bench treatment.
42750–231	Captan 80 DF	Albaugh LLC	Dichondra, turf grasses (golf courses, ornamental in non-pastured areas only), grasses (lawn seedbeds), turf (sod farms).
42750–235	Captan 50% WP	Albaugh LLC	Dichondra, turf grasses (ornamentals in non-pastured areas only), grasses (lawn seedbeds).
42750–236	Captan 39.75% FL	Albaugh LLC	Dichondra, turf grasses (ornamental in non-pastured areas only), grasses (lawn seed beds).
84396–12	Sungro Residual Spray	Sungro Products, LLC	Indoor aerosol, spray, and liquid formulations; use in food handling establishments and indoor crack and crevice use.

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 and Table 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 and Table 2 of this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA company No.	Company name and address
4	Bonide Products, Inc., 6301 Sutliff Road, Oriskany, NY 13424.
100	Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27419.
241	BASF Corporation, 29 Davis Drive, Research Triangle Park, NC 27709.
279	FMC Corporation, 1735 Market Street, Philadelphia, PA 19103.
3862	ABC Compounding Company, Inc., P.O. Box 16247, Atlanta, GA 30321.
6218	Summit Chemical Company, 8322 Sharon Drive, Frederick, MD 21704.
11556	Bayer Healthcare, LLC., P.O. Box 390, Shawnee Mission, KS 66201.
7696	BASF Corporation, P.O. Box 13528, Research Triangle Park, NC. 27709.
42750	Albaugh LLC., P.O. Box 2127, Valdosta, GA 31604–2127.
84396	Sungro Products, LLC., 810 E. 18th Street, Los Angeles, CA 90021.
89459	Central Garden & Pet Company, 1501 E. Woodfield Road, Suite 200, West Schaumburg, IL 60173.

IV. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The captan, dimethomorph, metiram, profenofos, propoxur and sodium acifluorfen registrants have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

V. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use termination should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of

the action. If the requests for voluntary cancellation and amendments to terminate uses are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for cancellation of product registrations and for amendments to terminate uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Tables 1 and 2 of Unit III.

A. For Propoxur Products 279–3395, 3862–135, 6218–24, 11556–33, 89459–39, 89459–28 Identified in Table 1 of Unit III

FMC Corporation requested that the voluntary cancellation of propoxur begin on December 31, 2017. EPA anticipates allowing the registrants to sell and distribute existing stocks of these products until December 31, 2017, which will be the effective product cancellation date. Thereafter, registrants will be prohibited from selling or distributing the propoxur products identified in Table 1 of Unit III., except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of the affected cancelled products until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

B. For All Other Products Identified in Table 1 of Unit III

For the other voluntary product cancellations noted, registrants will be permitted to sell and distribute existing stocks of voluntarily cancelled products for 1 year after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the products identified in Table 1 of Unit III., except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Once EPA has approved product labels reflecting the requested amendments to terminate uses, the registrant will be permitted to sell or distribute products under the previously approved labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, the registrant will be prohibited from selling or distributing the products whose labels include the deleted uses identified in Table 2 of Unit III., except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of the affected cancelled products until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 14, 2016.

Yu-Ting Guilaran,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2016–28096 Filed 11–21–16; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice EIB–2016–0004]

Proposal To Adopt the 2010 Small Business Jobs Act Interim Rule as an Alternative Size Standard for Defining a Small Business for Export-Import Bank Programs

AGENCY: Export-Import Bank of the United States.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank of the United States (''EXIM Bank'') proposes to adopt the Interim Rule (as defined below) set forth in Section 1116 of the Small Business Jobs Act of 2010 (Pub. L. 111–240) (the ''Jobs Act'') as an alternative standard for defining a small business for all of its programs. The Jobs Act mandated that the U.S. Small Business Administration (''SBA'') use maximum tangible net worth and average net income as an alternative to the use of industry based size standards as follows: Not more than $15 million in tangible net worth and $5 million in average net income after Federal income taxes to define a small business concern (''Interim Rule''). The SBA currently uses the Interim Rule for its business loans under Section 7(a) of the Small Business Act (''7(a) Loan Program'') and development company loans under Title V of the Small Business Investment Act of 1958 (''504 Loan Program'', and together with the 7(a) Loan Program, the ''SBA Loan Programs'') to determine size eligibility for an applicant if such applicant does not meet the size standards that it has developed for individual industries as defined under the North American Industry Classification System (''NAICS''). If approved by the SBA's Administrator, EXIM Bank will apply the Interim Rule as an alternative size standard in addition to using size standards established by SBA for individual industries to determine whether or not participants of EXIM programs can be categorized as small business concerns.

DATES: Comments must be received on or before December 6, 2016 to be assured of consideration.

ADDRESSES: Comments may be submitted through the Federal rulemaking portal at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2016–0004 under the heading ''enter keyword or ID'' and select ''Search.'' Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2016–0004 on any attached document. Comments received will be made available to the public at *WWW.REGULATIONS.GOV.*

PURPOSE AND USE: EXIM Bank proposes to align its size standards for determining a small business with SBA's current standards for the SBA Loan Programs by adopting the Interim Rule, set forth in the Jobs Act. The Interim Rule would be used as an alternative size standard, in addition to and not a replacement of, SBA's industry based size standards currently used for defining a ''small business concern'' for EXIM Bank's programs and reporting obligations. The Interim Rule provides that an applicant for a SBA Loan Program may be eligible for such a loan if (i) the tangible net worth of the applicant is not more than $15,000,000; and (ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the two full fiscal years before the date of the application is not more than $5,000,000. If the request to adopt the Interim Rule as an alternative size standard is approved by the SBA's Administrator for EXIM Bank programs, any applicant for any EXIM Bank product would be screened to determine whether or not it is a small business concern as follows: (i) First by using the industry-based size standards and (ii) then by applying the Interim Rule, if such applicant does not qualify as a small business concern under the industry based- size standards. It is EXIM Bank's belief and understanding that the approval for EXIM Bank to adopt the Interim Rule would align its small business size definitions with SBA's current practices and bring consistency to the marketplace, would possibly increase the number of applicants qualifying as a small business concern for EXIM Bank's

programs and increase the accuracy of EXIM Bank's reporting to Congress on its small business activities.

Legal Framework and Statutory Background

Section 2(b)(1)(E)(v) of the EXIM Bank Charter requires EXIM Bank to make available not less than 25% of its overall loan, guarantee and insurance authority to support the financing of exports by ''small business concerns.'' The Charter further states that a ''small business concern'' is ''as defined under Section 3 of the Small Business Act''. In addition to criteria for determining a ''small business concern'' set forth therein, Section 3 of the Small Business Act grants the Administrator of the SBA the general authority to establish small business size standards for Federal government programs. Through this authority, SBA has promulgated industry-specific size standards which determine eligibility as a small business for more than 1000 industry categories as defined by the North American Industry Classification System (NAICS). Historically, EXIM Bank has relied on these industry-based size standards to be able to determine which participants in its programs can be considered a small business concern.

Under the Jobs Act, Congress amended the definition of ''Small Business Concerns'' in Section 3(a) of the Act by adding an ''Alternative Size Standard'' as an additional component of such definition. Under the new Section 3(a)(5) of the Small Business Act, Congress directed the SBA to establish an alternative size standard using maximum tangible net worth and average net income for applicants for the SBA Loan Programs. Further, the Jobs Act provided that until the SBA establishes a permanent tangible net worth and net income based alternative size standard, the Interim Rule would enable applicants to be eligible for the SBA Loan Programs if the applicant's: (1) Tangible net worth is not more than $15 million, and (2) the average net income after federal income taxes for the two fiscal years prior to the date of application is not more than $5 million. As of the publication of this notice, the SBA has not established a permanent alternative size standard definition and as a result, the SBA continues to apply the Interim Rule to define a small business concern for the SBA Loan Programs, in addition to using the industry based size standards. Based on EXIM Bank's Charter which emphasizes assistance to small business concerns and its mandate to adhere to SBA's definitions of small business, EXIM Bank proposes to adopt the Interim Rule as appropriate and necessary to accomplish those mandates, following approval by the SBA's Administrator.

Business Rationale

An important rationale for aligning EXIM Bank's definition of small business with the SBA's definition as it applies to the SBA Loan Programs is that EXIM Bank programs are complementary and/or work in conjunction with the 7(a) Loan Programs. As a result, we believe that EXIM Bank and the SBA may often serve many of the same concerns. However, currently, small businesses that qualify for 7(a) Loan Programs under the Interim Rule but not under industry based size standards would not be considered small businesses for programs offered by EXIM Bank. Notwithstanding a small business's eligibility for the SBA Loan Programs under the Interim Rule, the same small business may potentially be subject to different size criteria for EXIM Bank's program's because EXIM Bank is currently unable to use the Interim Rule to determine whether a concern can be considered a small business for its programs. This inconsistency can cause confusion in the marketplace and cause the same entities to be treated differently by SBA and EXIM Bank even though such entities may be evaluated for similar purposes. It also poses a difficulty for EXIM Bank in providing accurate reporting on the size of its participants to Congress because the same concern may be considered a small business under a SBA Loan Program but not under an EXIM Bank program. Accordingly, EXIM Bank proposes to align its small business size criteria with the Interim Rule so that small businesses that are eligible for SBA Loan Programs under the Interim Rule will also be considered small businesses for EXIM Bank purposes.

The 7(a) Loan Program represents the bulk of SBA's small business guaranteed loans. Furthermore, SBA's working capital and all of its international guaranteed loan programs fall under the umbrella of the 7(a) Loan Program. The SBA's international programs include the Export Express Loan Program, Export Working Capital Program and the International Trade Loan Program. In each case, SBA is authorized to guarantee loans to small businesses using its industry based size standards or using the Interim Rule for businesses that otherwise may not be eligible under the industry based size standards. Similarly, EXIM Bank programs also provide various financing and other support to small businesses through working capital programs, medium and long term guaranteed credit, direct loans, trade credit insurance and other financial support that facilitates the export of US made goods and services. Although EXIM Bank programs are available to businesses of all sizes, significant efforts are made to make these programs accessible to small businesses, and some EXIM Bank programs are available exclusively to small businesses, such as Express Insurance. The SBA may require trade credit insurance on its loan guarantee programs where the borrower is exporting on open account terms. These credit insurance requirements could be met by EXIM Bank through the Express Insurance program. As further incentive, EXIM Bank provides a 25% discount on insurance premiums for SBA borrowers who use any one of the many EXIM Bank insurance policy options. Other EXIM Bank programs are likewise useful to current SBA borrowers. For example, if a borrower's working capital needs exceed $5 million (the maximum loan amount under the 7(a) Loan Program), the EXIM Bank Business Credit Working Capital Guarantee Program (''WCGP'') can be used to replace the borrower's SBA guaranteed working capital facilities. In fact, to facilitate such a transition, EXIM Bank and the SBA share a common application with respect to these working capital guarantee programs. If the borrower needs to sell on terms longer than the three year maturity authorized for the SBA's Export Working Capital Program, EXIM Bank has a range of medium and long term buyer options that can ensure the booking of a sale. Given the complementary nature and similarities of the 7(a) Loan Program and EXIM Bank financing products, EXIM Bank believes it is in the best interest of the public that the Interim Rule be adopted for EXIM Bank products so that the standards for a small business are consistent between these federal agencies.

Impact of Adopting the Interim Rule

EXIM Bank believes that the adoption of the Interim Rule for its programs would enable business concerns that do not qualify as small business concerns under the industry based size standards to qualify as small business concerns under the Interim Rule. EXIM Bank also believes that some business concerns that currently qualify as small business concerns for the SBA Loan Programs but not for EXIM Bank Programs will also qualify as small business concerns under the Interim Rule. EXIM Bank intends to collect data showing the amount of participants that qualify as a small business concern under the

Interim Rule if the Interim Rule is approved for EXIM Bank programs.

Request for Comments: EXIM Bank seeks comments from the public with respect to its proposal to use the Interim Rule as an alternative size standard in addition to the industry based standards in determining what participants of EXIM Bank programs can be considered a small business. Commenters addressing this proposed rule should include data and/or other information they consider relevant in support of their comments.

INFORMATION ON DECISION: Information on the final decision for this proposal will be available in the **Federal Register**.

In accordance with SBA's small business size regulations, specifically 13 CFR 121.901–904, EXIM Bank must evaluate the comments and must submit them with its recommendation to the SBA's Administrator's approval. The public must be made aware that the proposed alternative size standard under the Interim Rule will not take effect until EXIM Bank publishes a final notice in the **Federal Register**, which will only occur after the SBA's Administrator has approved the adoption of the Interim Rule for EXIM Bank programs as an alternative size standard.

Joyce B. Stone,

Program Specialist, Office of the General Counsel.

[FR Doc. 2016–28083 Filed 11–21–16; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Thursday, November 17, 2016

November 10, 2016.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 17, 2016 which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW., Washington, DC.

Item No.	Bureau	Subject
1	WIRELESS TELECOMMUNICATIONS	TITLE: Universal Service Reform—Mobility Fund (WT Docket No. 10–208); Connect America Fund (WC Docket No. 10–90); A National Broadband Plan for Out Future (GN Docket No. 09–51); Establishing Just and Reasonable Rates for Local Exchange Carriers (WC Docket No. 07–135); High-Cost Universal Service Support (WC Docket No. 05–337); Developing an Unified Intercarrier Compensation Regime (CC Docket No. 01–92); Federal-State Joint Board on Universal Service (CC Docket No. 96–45); Lifeline and Link-Up (WC Docket No. 03–109). SUMMARY: The Commission will consider a Report and Order that would adopt rules for the second phase of the Mobility Fund, which would provide ongoing universal service support dedicated to expanding the availability of mobile broadband networks.
2	WIRELESS TELECOMMUNICATIONS	TITLE: Roaming Obligations of Commercial Mobile Service Providers and Regulatory Classification of Voice over LTE Service (WT Docket No. 16–356) SUMMARY: The Commission will consider a Notice of Proposed Rulemaking that would seek comment on proposals to implement a unified roaming standard and to classify Voice over LTE.
3	WIRELINE COMPETITION	TITLE: Business Data Services in an Internet Protocol Environment (WC Docket No. 16–143); Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans (WC Docket No. 15–247); Technology Transitions (GN Docket No. 13–5); Special Access for Price Cap Local Exchange Carriers (WC Docket No. 05–25); AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services (RM–10593). SUMMARY: The Commission will consider a Report and Order and Second Further Notice of Proposed Rulemaking that would allow for light-touch regulation of packet-based Business Data Services and retain and update price cap regulation for lower-bandwidth TDM-based Business Data Services to ensure that lack of competition does not unfairly harm commercial customers or the consumers who rely upon these services.
4	MEDIA	TITLE: Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (MB Docket No. 11–43). SUMMARY: The Commission will consider a Report and Order which addresses the amount of video described programming required to be made available to consumers.

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Consent Agenda

The Commission will consider the following subjects listed below as a consent agenda and these items will not be presented individually:

1	ENFORCEMENT	TITLE: Enforcement Bureau Action. SUMMARY: The Commission will consider an enforcement action.
2	GENERAL COUNSEL	TITLE: In the Matters of Lara V. Carlson on Request for Inspection of Records (FOIA Control No. 2015–601). SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning Applications for Review filed by Lara Carlson which appealed a decision by the Wireline Competition Bureau addressing a Freedom of Information Act request.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services, call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–28000 Filed 11–21–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0484]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before December 22, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Kimberly R. Keravuori, OMB, via email *Kimberly_R_Keravuori@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0484.

Title: Part 4 of the Commission's Rules Concerning Disruptions to Communications.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 798 respondents; 13,012 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation To Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i)–(j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c.

Total Annual Burden: 25,006 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In accordance with 47 CFR 4.2, reports and information contained therein are presumed confidential. The filings are shared with the Department of Homeland Security through a password-protected real time access to NORS. Other persons seeking disclosure must follow the procedures delineated in 47 CFR Sections 0.457 and 0.459 of the Commission's rules for requests for and disclosure of information. The revisions noted in this information collection do not affect the confidential treatment of information provided to the Commission through outage reports filed in NORS.

Needs and Uses: On May 26, 2016, the Commission released a Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, PS Docket Nos. 15–80, 11–60, and ET Docket No. 04–35; FCC 16–63 (The Report and Order and Order on Reconsideration) adopting final and proposed rules. The information to be collected pertains to final rules summarized and published in the **Federal Register** on July 12, 2016, 81 FR 45055.

The general purpose of the Commission's Part 4 rules is to gather sufficient information regarding disruptions to telecommunications to facilitate FCC monitoring, analysis, and investigation of the reliability and security of voice, paging, and interconnected VoIP communications services, and to identify and act on potential threats to our Nation's telecommunications infrastructure. The Commission uses this information collection to identify the duration, magnitude, root causes, and

contributing factors with respect to significant outages, and to identify outage trends; support service restoration efforts; and help coordinate with public safety officials during times of crisis. The Commission also maintains an ongoing dialogue with reporting entities, as well as with the communications industry at large, generally regarding lessons learned from the information collection in order to a foster better understanding of the root causes of significant outages, and to explore preventive measures in the future so as to mitigate the potential scale and impact of such outages.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–28005 Filed 11–21–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1211]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 23, 2017. If you anticipate that you will submit comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1211.

Title: Sections 96.17; 96.21; 96.23; 96.25; 96.33; 96.35; 96.39; 96.41; 96.43; 96.45; 96.51; 96.57; 96.59; 96.61; 96.63; 96.67, Commercial Operations in the 3550–3650 MHz Band.

Form Number: N/A.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities, state, local, or tribal government and not for profit institutions.

Number of Respondents: 110,782 respondents; 226,099 responses.

Estimated Time per Response: .25 to 1 hour.

Frequency of Response: One-time and on occasion reporting requirements; other reporting requirements—as-needed basis for equipment safety certification that is no longer in use, and consistently (likely daily) responses automated via the device.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for, these collections are contained in 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 302(a), 303, 304, 307(e), and 316 of the Communications Act of 1934.

Total Annual Burden: 64,561 hours.

Total Annual Cost: $13,213,975.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The FCC adopted an Order on Reconsideration and Second Report and Order, FCC 16–55, that amends rules established in the First Report and Order, FCC 15–47, for commercial use of 150 megahertz in the 3550–3700 MHz (3.5 GHz) band and a new Citizens Broadband Radio Service, on April 28, 2016, published at 81 FR 49023 (July 26, 2016). The rule changes and information requirements contained in the First Report and Order are also approved under this Office of Management and Budget (OMB) control number and have not changed since they were last approved by OMB.

The Commission seeks approval from OMB for the information collection requirements contained in FCC 16–55. The amendments contained in the Second Report and Order create additional capacity for wireless broadband by adopting a new approach to spectrum management to facilitate more intensive spectrum sharing between commercial and federal users and among multiple tiers of commercial users. The Spectrum Access System (SAS) will use the information to authorize and coordinate spectrum use for Citizen Broadband Radio Service Devices (CBSDs). The Commission will use the information to coordinate among the spectrum tiers and determine Protection Areas for Priority Access Licensees (PALs).

The following is a description of the information collection requirements for which the Commission seeks OMB approval:

Section 96.25(c)(1)(i) requires PALs to inform the SAS if a CBSD is no longer in use.

Section 96.25(c)(2)(i) creates a default protection contour for any CBSD at the outer limit of the PAL Protection Area, but allows a PAL to self-report a contour smaller than that established by the SAS.

These rules which contain information collection requirements are designed to provide for flexible use of this spectrum, while managing three tiers of users in the band, and create a low-cost entry point for a wide array of users. The rules will encourage innovation and investment in mobile broadband use in this spectrum while protecting incumbent users. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–28007 Filed 11–21–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0779]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before December 22, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0779.

Title: Sections 90.20(a)(1)(iii), 90.769, 90.767, 90.763(b)(l)(i)(a), 90.763(b)(l)(i)(B), 90.771(b) and 90.743, Rules for Use of the 220 MHz Band by the Private Land Mobile Radio Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 140 respondents; 670 responses.

Estimated Time per Response: 2 hours to 20 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 154(i), 303(g), 303(r) and 332(a).

Total Annual Burden: 5,886 hours.

Total Annual Cost: $135,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is a need for confidentiality with this collection of information.

Needs and Uses: The Commission will submit this expiring collection to the Office of Management and Budget (OMB) for approval.

The Commission is requesting approval for an extension of information collection 3060–0779.

The collection includes rules to govern the future operation and licensing of the 220–222 MHz and (220 MHz service). In establishing this licensing plan, FCC's goal is to establish a flexible regulatory framework that allows for efficient licensing of the 220 MHz service, eliminates unnecessary regulatory burdens, and enhances the competitive potential of the 220 MHz service in the mobile service marketplace. However, as with any licensing and operational plan for a radio service, a certain number of regulatory and information burdens are necessary to verify licensee compliance with FCC rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–28001 Filed 11–21–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: November 18, 2016–3:30 p.m.

PLACE: 800 North Capitol Street NW., First Floor Hearing Room, Washington, DC.

STATUS: The Commission Meeting held Thursday, November 17, 2016 will reconvene on Friday, November 18, 2016 for consideration of Closed Item 4: THE Alliance Agreement, FMC Agreement No. 012439. The meeting will be held in Closed Session.

MATTERS TO BE CONSIDERED:

Closed Session

4. THE Alliance Agreement, FMC Agreement No. 012439

CONTACT PERSON FOR MORE INFORMATION: Rachel E. Dickon, Assistant Secretary, (202) 523–5725.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–28170 Filed 11–18–16; 11:15 am]

BILLING CODE 6730–01–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 December 16, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Merchants Bancorp,* Carmel, Indiana to acquire Bluestem Development Corporation and thereby indirectly acquire Joy State Bank, both of Joy, Illinois.

Board of Governors of the Federal Reserve System, November 17, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–28081 Filed 11–21–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 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 December 5, 2016.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Pat McInnis Cooper Marital Trust, John A. Cooper III as trustee, individually and as part of a family control group that also includes the Pat McInnis Cooper Family Trust, John A. Cooper III as trustee, the Pat McInnis Cooper GS Trust, John A. Cooper III as trustee, and the John A. Cooper Jr. Family Trust, John A. Cooper III as trustee, all of Rogers, Arkansas;* to retain control of voting shares and for the family control group to retain control voting shares of FNBC Bancorp, Inc., Ash Flat, Arkansas, and thereby control shares of FNBC Bank, Ash Flat, Arkansas.

Board of Governors of the Federal Reserve System, November 17, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–28082 Filed 11–21–16; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–CIO–2016–01; Docket No. 2016–0002; Sequence No. 26]

Grace Hopper Day Hackathon

AGENCY: Chief Information Office, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: This notice is to announce a competition for all open source contributors to redesign the GSA Open Web site, *http://open.gsa.gov,* the current developer portal for all GSA data, APIs, and source code open to the public. This competition is hosted by GSA's IT Digital Services team. The competition details can be viewed at: *http://open.gsa.gov/grace-hopper-hackathon/*. The goal of this redesign is to improve public engagement with GSA digital assets, and increase understanding and awareness of agency open technology. GSA challenges developers and designers from industry, academia, and Federal Government to create solutions using the site product roadmap provided on the competition details Web page.

DATES: Online registration for this event will open on November 22, 2016, and will close Tuesday, December 6, 2016, at 11:59 p.m. Eastern Standard Time (EST). The competition will take place on Friday; December 9, 2016, from 9:00 a.m. until 4:30 p.m., EST; check in will begin at 8:00 a.m., EST.

ADDRESSES: *Registration:* Registration for this event will be accomplished online at the following link: *http://open.gsa.gov/grace-hopper-hackathon/*.

The event space is limited to the first 100 people. Once registration is complete, participants will receive a confirmation email.

Event Location: GSA Headquarters, 1800 F Street NW., Washington, DC 20405. A government-issued ID shall be required to gain access into the building. All participants must enter through the main entrance located on 1800 F Street NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Cindy A. Smith, at *cindya.smith@gsa.gov* or 816–823–5291.

SUPPLEMENTARY INFORMATION:

Purpose: In this competition, participants are asked to redesign the GSA Open Web site, *http://open.gsa.gov*.

Details of Challenge: Participants will be asked to redesign the current developer portal *open.gsa.gov*.

The solution should be a usability-driven feature to encourage public engagement with the site and GSA digital assets.

Predetermined teams (consisting of up to 5 individuals) are welcome to include a stand-alone or mix of private industry, academia, and eligible individuals. Cash prizes will be awarded to the best projects.

Data: Event information will be posted on the event page at, *http://open.gsa.gov/grace-hopper-hackathon/*.

Project: Participants are asked to redesign the GSA Open Web site, *http://open.gsa.gov,* the current developer portal for all GSA data, APIs, and source code open to the public.

Eligibility for Challenge: Eligibility to participate in the Grace Hopper Day Hackathon, and win a prize, is limited to entities/individuals who—

1. Have registered to participate in the Competition, and complied with the rules of the competition as explained in this posting.

2. Have been incorporated in, and maintain, a primary place of business in the United States. In the case of an individual, whether participating singly or in a group, the participant must be a citizen or permanent resident of the United States. Participants must be at least 18 years of age to participate in this event.

Participants may not be a Federal entity or Federal employee acting within the scope of employment. However, an individual or entity shall

not be deemed ineligible to win prize money because the individual or entity used Federal facilities or consulted with Federal employees during a competition, if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Participants agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this competition, whether the injury, death, damage, or loss arose through negligence or otherwise. Entrants are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in this competition.

As the Federal Government is under a strict duty not to give preferential treatment to any private organization or individual, participants must agree to take diligent care to avoid the appearance of government endorsement of competition participation and submission. Participants must agree not to refer to the government's use of their submission (be it product or service) in any commercial advertising or similar promotions in a manner that could reasonably imply (in the judgment of a reasonable person) that GSA or the Federal Government endorses, prefers, sponsors, or has an affiliation with participants' products or services. Participants agree that GSA's trademarks, logos, service marks, trade names, or the fact that GSA awarded a prize to a participant, shall not be used by the participant to imply direct GSA endorsement of participant or participant's submission. Both participants and GSA may list the other party's name in a publicly available customer or other list so long as the name is not displayed in a more prominent fashion than any other third-party name.

Prizes: GSA may award prizes of no more than $1,000 to each member of a winning team (3 team's total). GSA is not required to award all prizes if the judges determine that a smaller number of entries meet the scope and requirements laid out for this competition, or if the agency only plans to use code from a smaller number of entries.

Funding for the Grace Hopper Day Hackathon awards will come from GSA. Prizes will be awarded to each member of a winning team via Electronic Funds Transfer (EFT), within 60 days of announcing the winner(s).

Requirements: The final solution should be open source code submitted as a pull request to the *https://github.com/GSA/open-gsa-redesign* GitHub repository. ''Open source'' refers to a program in which the source code is available to the general public for use and/or modification from its original design free of charge. In order to be Open Source Initiative Certified, the solution must meet the following nine criteria:

1. The author or holder of the license of the source code cannot collect royalties on the distribution of the code.
2. The distributed software must make the source code accessible to the user.
3. The author must allow modifications and derivations of the work under the software's original name.
4. No person, group, or field of endeavor can be denied access to the software.
5. The rights attached to the software must not depend on the software being part of a particular software distribution.
6. The licensed software cannot place restrictions on other software that is distributed with it.
7. The solution must be an online, interactive solution that meets the goals and objectives provided in this document.
8. The solution must include documentation of all data sources used.
9. The solution must include a description of how the solution can be updated with additional data from other agencies, if applicable.

The winner(s) of the competition will, in consideration of the prize(s) to be awarded, grant to GSA a perpetual, non-exclusive, royalty-free license to use any and all intellectual property to the winning entry for any governmental purpose, including the right to permit such use by any other agency or agencies of the Federal Government. All other rights of the winning entrant will be retained by the winner of the competition.

Scope: Any federal data and information that is publicly available is included in the scope of this challenge.

Judges: There will be a panel of judges, each with expertise in government-wide policy, information technology, and/or acquisition. Judges will award a score to each submission. The winner(s) of the competition will be decided based on the highest average overall score. Judges will only participate in judging submissions for which they do not have any conflicts of interest.

Judging Criteria: Each solution will be assessed based on technical competence and capabilities, use of design best practices to improve usability, creativity/innovation, and valuable information and insights.

Submissions will be judged based on the following metrics—

Technical competence and capabilities/Weight 50 percent: The solution addresses the primary goals of the competition. It is a finished feature that can improve Web site interaction with existing and potential customers, increase understanding and use of GSA open assets, and/or increase public engagement with GSA data, APIs and code.

Use of design best practices to improve usability/Weight 20 percent: The solution displays in a way that is easy to understand, visually appealing, and will help drive understanding of GSA open assets as well as engagement.

Creativity/Innovation/Weight 10 percent: The solution exceeds any internal capability that GSA has for Web site development through its incorporation of creative design elements and innovative capabilities.

Valuable information & insights regarding data/Weight 20 percent: The solver provides recommendations for additional functionality to the submitted feature for implementation by GSA. The solver identifies gaps in the feature and suggests additional enhancements to aid the agency in setting future product roadmap releases.

Challenge Objectives:

- Increase public understanding and use of GSA digital assets. Improve *open.gsa.gov* Web site interaction with existing and potential customers.
- Increase public engagement with GSA data, APIs and code.
- Post all open source solutions on the GSA *https://github.com/GSA/open-gsa-redesign* repository for future use by the federal government developer community and GSA.

All participants are required to check in with Security upon arriving at the GSA Central Office Building. Follow the posted signs to the GSA Auditorium. All participants must sign the document titled: Gratuitous Service Agreement.

Dated: November 16, 2016.

Steve Grewal,

Deputy, Chief Information Officer (CIO).

[FR Doc. 2016–28011 Filed 11–21–16; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0113; Docket 2016–0053; Sequence 43]

Information Collection; Acquisition of Helium

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning acquisition of helium.

DATES: Submit comments on or before January 23, 2017.

ADDRESSES: Submit comments identified by Information Collection 9000–0113, Acquisition of Helium, by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0113. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0113, Acquisition of Helium'', Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0113, Acquisition of Helium'', on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0113, Acquisition of Helium.

Instructions: Please submit comments only and cite Information Collection 9000–0113, Acquisition of Helium, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, via telephone 703–605–2868 or via email to *mahruba.uddowla@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Helium Act (Pub. L. 86–777) (50 U.S.C. 167a, *et seq.*) and the Department of the Interior's implementing regulations (30 CFR parts 601 and 602) require Federal agencies to procure all major helium requirements from the Bureau of Land Management, Department of the Interior.

FAR 8.5, Acquisition of Helium, and the clause 52.208–8 Required Sources for Helium and Helium Usage Data, requires that the Contractor provide to the Contracting Officer the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier; (i) The name of the supplier; (ii) The amount of helium purchased; (iii) The delivery date(s); and (iv) the location where the helium was used. Such information will facilitate enforcement of the requirements of the Helium Act and the contractual provisions requiring the use of Government helium by agency contractors.

The information is used in administration of certain Federal contracts to ensure contractor compliance with contract clauses. Without the information, the required use of Government helium cannot be monitored and enforced effectively. The FAR requires that the contractor provide helium purchase information 10 days after delivery from a federal helium supplier, not for the contractor to forecast what they are going to purchase.

B. Annual Reporting Burden

In consultation with subject matter experts at the Department of the Interior, Bureau of Land Management, Helium Operations, the number of estimated responses per year was verified as being within an acceptable range, as was the average time required to read and prepare information which was estimated at 1 hour per response.

Respondents: 26.
Responses per Respondent: 1.
Total Responses: 26.
Hours per Response: 1.
Total Burden Hours: 26.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0113, Acquisition of Helium, in all correspondence.

Dated: November 17, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–28062 Filed 11–21–16; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice–ISP–2016–03; Docket No. 2016–0002; Sequence No. 23]

Privacy Act of 1974: Revised Privacy Act System of Records; Withdrawal

AGENCY: General Services Administration (GSA).

ACTION: Notice of a Privacy Act system of records; withdrawal.

SUMMARY: Access Certificates for Electronic Services GSA/GOVT–5 original intent was to facilitate secure, on-line communication between federal automated information systems and the public, using digital signature technologies to authenticate and verify identity. The reason for the cancellation notice is the system is no longer in use as a government system and has been updated as a commercial affiliate program of the Federal PKI.

DATES: *Effective:* November 22, 2016.

FOR FURTHER INFORMATION CONTACT: Call or email the GSA Privacy Act Officer:

telephone 571–388–6570; or email *gsa.privacyact@gsa.gov.*

Pranjali Desai,

Director, Office of Information Management, General Services Administration.

[FR Doc. 2016–28084 Filed 11–21–16; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–17–17CQ]

Proposed Data Collection Submitted for Public Comment and Recommendations—Zika Virus Associated Neurologic Illness Case Control Study; Correction

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice; correction.

SUMMARY: The Centers for Disease Control and Prevention (CDC) published a document in the **Federal Register** of November 17, 2016, concerning request for comments on *Proposed Data Collection Submitted for Public Comment and Recommendations—Zika Virus Associated Neurologic Illness Case Control Study.* The document provided the incorrect agency identification number (60Day–17–17ZQ).

FOR FURTHER INFORMATION CONTACT: Leroy Richardson, 1600 Clifton Road, MS D–74, Atlanta, GA 30333; telephone (404) 639–4965; email: *omb@cdc.gov.*

Correction

In the **Federal Register** of November 17, 2016, in FR Doc. 2016–27692, on page 81143, in the first column (first heading), correct the agency identification number to read:

[60Day–17–17CQ; Docket No. CDC–2016–0107]

Dated: November 17, 2016.

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. 2016–28072 Filed 11–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State Plan Child Support Collection and Establishment of Paternity Title IV–D, OCSE–100.

OMB No.: 0970–0017.

Description: The Office of Child Support Enforcement has approved a IV–D state plan for each state. Federal regulations require states to amend their state plans only when necessary to reflect new or revised federal statutes or regulations or material change in any state laws, regulations, policies, or IV–D agency procedures. The requirement for submission of a state plan and plan amendments for the Child Support Enforcement program is found in sections 452, 454, and 466 of the Social Security Act.

Respondents: State IV–D Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan (OCSE–100)	54	5	.5	135
State Plan Transmittal (OCSE–21–U4)	54	5	.25	67.5

Estimated Total Annual Burden Hours: 202.5.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–28107 Filed 11–21–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–E–4875]

Determination of Regulatory Review Period for Purposes of Patent Extension; ANAVIP

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ANAVIP and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by January 23, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 22, 2017. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–E–4875 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ANAVIP.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product ANAVIP (crotalidae Immune F(ab')2 (equine)). ANAVIP is indicated for management of adult and pediatric patients with North American rattlesnake envenomation. Subsequent to this approval, the USPTO received a patent term restoration application for ANAVIP (U.S. Patent No. 6,709,655) from Instituto Bioclon, SA de CV, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 10, 2016, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of ANAVIP represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ANAVIP is 4,223 days. Of this time, 3,443 days occurred during the testing

phase of the regulatory review period, while 780 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* October 15, 2003. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 15, 2003.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* March 18, 2013. FDA has verified the applicant's claim that the biologics license application (BLA) for ANAVIP (BLA 125488/0) was initially submitted on March 18, 2013.

3. *The date the application was approved:* May 6, 2015. FDA has verified the applicant's claim that BLA 125488/0 was approved on May 6, 2015.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28049 Filed 11–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–3848]

E11(R1) Addendum: Clinical Investigation of Medicinal Products in the Pediatric Population; International Council for Harmonisation; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance entitled ''E11(R1) Addendum: Clinical Investigation of Medicinal Products in the Pediatric Population'' (E11(R1) addendum). The draft guidance was prepared under the auspices of the International Council for Harmonisation (ICH), formerly the International Conference on Harmonisation. The draft guidance is an addendum to the guidance entitled ''E11 Clinical Investigation of Medicinal Products in the Pediatric Population'' (ICH E11 guidance). The draft guidance is intended to update the ICH E11 guidance and provide clarification and current regulatory perspective on topics in global pediatric drug development.

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 21, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–3848 for ''E11(R1) Addendum: Clinical Investigation of Medicinal Products in the Pediatric Population; International Council for Harmonisation; Draft Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this

information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or 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. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Lynne Yao, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993–0002, 301–796–2141; or CBER's Office of Communication, Outreach and Development; Center for Biologics Evaluation and Research; Food and Drug Administration; 10903 New Hampshire Ave., Bldg. 71; Silver Spring, MD 20993–0002; *ocod@fda.hhs.gov;* 1–800–835–4709 or 240–402–8010.

Regarding the ICH: Amanda Roache, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1176, Silver Spring, MD 20993–0002, *Amanda.roache@fda.hhs.gov,* 301–796–4548.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''E11(R1) Addendum: Clinical Investigation of Medicinal Products in the Pediatric Population; International Council for Harmonisation; Draft Guidance for Industry; Availability.'' In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in clinical and scientific approaches for drug development among regulatory agencies.

ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products for human use among regulators around the world. The six founding members of the ICH are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; CDER and CBER, FDA; and the Pharmaceutical Research and Manufacturers of America. The Standing Members of the ICH Association include Health Canada and Swissmedic. Any party eligible as a Member in accordance with the ICH Articles of Association can apply for membership in writing to the ICH Secretariat. The ICH Secretariat, which coordinates the preparation of documentation, operates as an international nonprofit organization and is funded by the Members of the ICH Association.

The ICH Assembly is the overarching body of the Association and includes representatives from each of the ICH members and observers.

In September 2016, the ICH Assembly endorsed the draft guidance entitled ''E11(R1) Addendum: Clinical Investigation of Medicinal Products in the Pediatric Population'' and agreed that the guidance should be made available for public comment. The draft guidance is the product of the E11 Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the E11 Expert Working Group.

The addendum to the ICH E11 guidance complements the guidance and provides clarification and current regulatory perspective on current and evolving topics in global pediatric drug development. The E11(R1) addendum includes sections on ethical considerations; age classification and pediatric subgroups, including neonates; and pediatric formulations that supplement the content in the ICH E11 guidance. A new section on Commonality of Scientific Approach for Pediatric Drug Development Programs addresses issues to aid scientific discussions at various stages of pediatric drug development in different regions. The section on Approaches to Optimize Pediatric Drug Development provides additional information on extrapolation and introduces modelling and simulation.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''E11(R1) Addendum: Clinical Investigation of Medicinal Products in the Pediatric Population.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *https://www.regulations.gov, http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: November 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28048 Filed 11–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos.: FDA–2015–E–0824; FDA–2015–E–0846; FDA–2015–E–0848; FDA–2015–E–0850]

Determination of Regulatory Review Period for Purposes of Patent Extension; CORE VALVE SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CORE VALVE SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by January 23, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 22, 2017. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2015–E–0824; FDA–2015–E–0846; FDA–2015–E–0848; and FDA–2015–E–0850 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; CORE VALVE SYSTEM''. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993–0002, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device CORE VALVE SYSTEM.

CORE VALVE SYSTEM is indicated for relief of aortic stenosis in patients with symptomatic heart disease due to severe native calcific aortic stenosis (aortic valve area ≤0.8 cm^2, a mean aortic valve gradient of >40 mmHg, or a peak aortic-jet velocity of 4.0 m/s) and with native aortic annulus diameters between 18 and 29 mm who are judged by a heart team, including a cardiac surgeon, to be at extreme risk or inoperable for open surgical therapy (predicted risk of operative mortality and or serious irreversible morbidity ≥50% at 30 days). Subsequent to this approval, the USPTO received patent term restoration applications for CORE VALVE SYSTEM (U.S. Patent Nos. 5,957,949; 7,018,406; 8,226,710; and 8,579,966 from Medtronic Corevalve LLC and U.S. Patent No. 5,957,949 from Medtronic Vascular Inc.), and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In two letters dated October 19, 2015, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of CORE VALVE SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for CORE VALVE SYSTEM is 1,194 days. Of this time, 1,017 days occurred during the testing phase of the regulatory review period, while 177 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* October 13, 2010. FDA has verified the applicants' claims that the date the investigational device exemption required under section 520(g) of the FD&C act for human tests to begin became effective October 13, 2010.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e):* July 25, 2013. FDA has verified the applicants' claims that the premarket approval application (PMA) for CORE VALVE SYSTEM (PMA P130021) was initially submitted July 25, 2013.

3. *The date the application was approved:* January 17, 2014. FDA has verified the applicants' claims that PMA P130021 was approved on January 17, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, these applicants seek 685 days, 360 days, or 66 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Petitions that have not been made publicly available on *https://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28047 Filed 11–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2015–E–2663; FDA–2015–E–2890]

Determination of Regulatory Review Period for Purposes of Patent Extension; RUCONEST

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for RUCONEST and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by January 23, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 22, 2017. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets

Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2015–E–2663 and FDA–2015–E–2890 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; RUCONEST.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product RUCONEST (rhC1INH). RUCONEST is indicated for treatment of acute attacks of hereditary angioedema in adult and adolescent patients. Subsequent to this approval, the USPTO received patent term restoration applications for RUCONEST (U.S. Patent Nos. 7,067,713 and RE43,691) from Pharming Intellectual Property B.V., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 19, 2015, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of RUCONEST represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for RUCONEST is 3,502 days. Of this time, 3,045 days occurred during the testing phase of the regulatory review period, while 457 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* December 15, 2004. The applicant claims July 29, 2004, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 15, 2004, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* April 16, 2013. FDA has verified the applicant's claim that the biologics license application (BLA) for RUCONEST (BLA 125495) was initially submitted on April 16, 2013.

3. *The date the application was approved:* July 16, 2014. FDA has verified the applicant's claim that BLA 125495 was approved on July 16, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,698 days or 557 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28046 Filed 11–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–E–2724]

Determination of Regulatory Review Period for Purposes of Patent Extension; CERDELGA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CERDELGA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by January 23, 2017. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 22, 2017. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–E–2724 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; CERDELGA.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product.

Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product CERDELGA (eliglustat). CERDELGA is indicated for the long-term treatment of adult patients with Gaucher disease type 1 who are CYP2D6 extensive metabolizers, intermediate metabolizers, or poor metabolizers as detected by an FDA-cleared test. Subsequent to this approval, the USPTO received a patent term restoration application for CERDELGA (U.S. Patent No. 7,196,205) from Genzyme Corporation, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 15, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of CERDELGA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for CERDELGA is 3,854 days. Of this time, 3,520 days occurred during the testing phase of the regulatory review period, while 334 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* February 1, 2004. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 1, 2004.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* September 20, 2013. FDA has verified the applicant's claim that the new drug application (NDA) for CERDELGA (NDA 205494) was initially submitted on September 20, 2013.

3. *The date the application was approved:* August 19, 2014. FDA has verified the applicant's claim that NDA 205494 was approved on August 19, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,518 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 16, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–28045 Filed 11–21–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Written Comments on the Mid-Course Review Working Group Draft Report and Draft Recommendations for Consideration by the National Vaccine Advisory Committee

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Vaccine Advisory Committee (NVAC) was established in 1987 to comply with Title XXI of the Public Health Service Act (Pub. L. 99–660) (section 2105) (42 U.S. Code 300aa–5). Its purpose is to advise and make recommendations to the Director of the National Vaccine Program on matters related to program responsibilities. The Assistant Secretary for Health (ASH) has been designated by the Secretary of Health and Human Services (HHS) as the Director of the National Vaccine Program. The National Vaccine Program Office (NVPO) is located within the Office of the Assistant Secretary for Health (OASH), Office of the Secretary, U.S. Department of Health and Human Services (HHS). NVPO provides leadership and fosters collaboration among the various Federal agencies involved in vaccine and immunization activities. The NVPO also supports the National Vaccine Advisory Committee (NVAC). The NVAC advises and makes recommendations to the ASH in her capacity as the Director of the National Vaccine Program on matters related to vaccine program responsibilities.

Recognizing the changes in the immunization landscape, the ASH charged the NVAC to conduct a Mid-course review to evaluate the progress of the National Vaccine Plan and provide recommendations to optimize priority areas. In March 2016, the NVAC formed the Mid-Course Review Working Group. Through a series of conference calls, electronic communication, and public discussions during the NVAC meetings, the working group identified a number of draft recommendations for consideration by the NVAC. These recommendations serve as a useful tool in refining collective strategies for shaping the future of the U.S. immunization enterprise, both domestically and globally. The draft report and draft recommendations from the working group will inform NVAC deliberations as the NVAC finalizes their recommendations for transmittal to the ASH.

On behalf of NVAC, NVPO is soliciting public comment on the draft report and draft recommendations from a variety of stakeholders, including the general public, for consideration by the NVAC as they develop their final recommendations to the ASH. It is anticipated that the draft report and draft recommendations, as revised with consideration given to public comment and stakeholder input, will be presented to the NVAC for adoption in February 2017 at the quarterly NVAC meeting.

DATES: Comments for consideration by the NVAC should be received no later than 5 p.m. EDT on December 27, 2016.

ADDRESSES:

- The draft report and draft recommendations are available on the Web at *http://www.hhs.gov/nvpo/nvac/index.html.*

• Electronic responses are preferred and may be addressed to: *anju.abraham@hhs.gov.*

• Written responses should be addressed to: National Vaccine Program Office, U.S. Department of Health and Human Services, 200 Independence Avenue SW., Room 733G.3B, Washington, DC 20201, *Attn:* NVAC Mid-course Review c/o Anju Abraham.

FOR FURTHER INFORMATION CONTACT: Anju Abraham, MS, MPH, National Vaccine Program Office, Office of the Assistant Secretary for Health, Department of Health and Human Services; telephone 202–205–5641; email *anju.abraham@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Public health represents a collaboration of multiple sectors in society working together to prevent disease and promote health. These concerted efforts include the tremendous impacts of the U.S. vaccine and immunization system, which represents one of the most significant public health achievements in the 20th century. Estimates suggest that routine childhood immunizations prevented 322 million illnesses and averted 732,000 premature deaths from vaccine-preventable illnesses in children born between 1994–2013, with an estimated societal cost-savings of $1.38 trillion.

The 2010 National Vaccine Plan provides a ten-year strategic direction for all U.S. vaccine and immunization related activities to create a robust and coordinated system to improve the health of Americans by achieving optimal prevention of infectious diseases through vaccination. The Department of Health and Human Services recognized the need to conduct an evaluation of the plan and subsequently charged the National Vaccine Advisory Committee with making recommendations that would address the progress of the 2010 National Vaccine Plan.

In March 2016, the NVAC formed a Mid-Course Review Working Group (MCRWG) to evaluate the status of progress on the goals of the National Vaccine Plan (the document can be found here: *www.hhs.gov/nvpo/national-vaccine-plan/midcourse/index.html*) and develop recommendations to the ASH. The MCRWG began their efforts by reviewing and assessing the findings from the National Vaccine Program's (NVPO) Mid-course Review to identify the opportunity areas. Then, the MCRWG shifted its focus to coordinate additional information collection from non-federal stakeholders to represent consumer groups and from federal stakeholders to further inform their findings and recommendations. Through a number of conference calls, electronic communication, and public discussions at the NVAC meetings, the working group identified a number of draft recommendations. These recommendations frame the five areas that represent opportunities to advance the National Vaccine Program over the remaining five years of the National Vaccine Plan. These five areas of opportunity include:

(1) Strengthen health information and surveillance systems to track, analyze and visualize disease, immunization coverage, and safety data, both domestically and globally;

(2) Foster and facilitate efforts to strengthen confidence in vaccines and the immunization system to increase coverage rates across the lifespan;

(3) Eliminate financial and systems barriers for providers and consumers to facilitate access to routinely recommended vaccines;

(4) Strengthen the science base for the development and licensure of vaccines;

(5) Facilitate vaccine development.

The NVAC draft report outlines the background and rationale for each of the opportunity areas and addresses the challenges, characteristics that constitute success, metrics to measure each area, and proposed metrics to be developed in the future. The conclusions and recommendations detail how the ASH can support HHS activities in these areas.

II. Request for Comment

NVPO, on behalf of the NVAC Mid-course Review Working Group, requests input on the draft report and draft recommendations. In addition to general comments on the draft report and draft recommendations, NVPO is seeking input on characteristics of success, challenges, and metrics to achieve success in the five opportunity areas outlined in the report. Please limit your comments to six (6) pages.

III. Potential Responders

HHS invites input from a broad range of stakeholders including individuals and organizations that have interests U.S. vaccine and immunization efforts and the role of HHS in advancing those efforts.

Examples of potential responders include, but are not limited to, the following:

—General public;
—advocacy groups, non-profit organizations, and public interest organizations;
—academics, professional societies, and healthcare organizations;
—public health officials and immunization program managers;
—physician and non-physician providers that administer immunization services, including pharmacists; and
—representatives from the private sector.

When responding, please self-identify with any of the above or other categories (include all that apply) and your name. Anonymous submissions will not be considered. Written submissions should not exceed six (6) pages. Please do not send proprietary, commercial, financial, business, confidential, trade secret, or personal information.

Dated: November 10, 2016.

Bruce Gellin,

Executive Secretary, National Vaccine Advisory Committee, Deputy Assistant Secretary for Health, Director, National Vaccine Program Office.

[FR Doc. 2016–28090 Filed 11–21–16; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the National Cancer Institute Council of Research Advocates was renewed for an additional two-year period on August 17, 2016.

It is determined that the National Cancer Institute Council of Research Advocates is in the public interest in connection with the performance of duties imposed on the National Cancer Institute and National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Jennifer Spaeth, Director, Office of Federal, Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *spaethj@od.nih.gov.*

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–28041 Filed 11–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 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; Heart, Lung, Blood and Sleep Conference Support Applications.

Date: December 12–13, 2016.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Stephanie J. Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291, *stephanie.webb@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; R25 Diversity: Short-Term Research Education to Increase Diversity.

Date: December 12, 2016.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Stephanie L. Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784, *constantsl@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: November 16, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–27997 Filed 11–21–16; 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; Materials To Support NIH Serving as an IRB of Record or a Single IRB for Outside Institutions (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with 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 August 22, 2016, page 56667 (81 FR 56667) 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.

DATES: 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: Written comments and/or suggestions regarding the items(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: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Julia Slutsman, Health Science Policy Analyst, Office of Human Subjects Research Protections (OHSRP), IRP, OD, NIH, Building 10, Room 1C154, 10 Center Drive, Bethesda, MD 20892, or call non-toll-free number 301–402–3444 or email your request, including your address to: *PHERRB@mail.nih.gov.* Formal requests for additional materials must be requested in writing.

SUPPLEMENTARY INFORMATION: The Office of Human Subjects Research Protections (OHSRP), Office of the Director (OD), 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.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Materials to Support NIH Serving As an IRB of Record or a Single IRB for Outside Institutions, 0925-New, Office of Human Subjects Research Protections (OHSRP), Office of the Director, National Institutes of Health (NIH).

Need and Use of Information Collection: The NIH Human Research Protections Program (HRPP) is preparing to implement the recent ''NIH Policy on the Use of a Single Institutional Review Board (sIRB) of Record for Multi-Site Research,'' which requires the use of a single IRB of record for human subject protections review of certain multisite studies. Additionally, the NIH and HHS have recently established the Public Health Emergency Research Review Board (PHERRB) mechanism, for human subject protections review of certain—typically multisite—public health emergency research studies. Any of the 12 NIH intramural IRBs can be designated to serve as the PHERRB for review of a public health emergency research protocol. Finally, proposed changes to federal human subject protections regulations, if finalized, will require the use of single IRB review for the majority of HHS funded, multi-site studies.

To meet all of these needs, and support efficient single IRB review, researchers at outside institutions will need to provide information to the NIH HRPP, which includes the NIH intramural IRBs, using materials developed by the NIH Office of Human Subject Protections. The required materials include: The Application for PHERRB Review (APR); the Initial Review Local Context Worksheet (IRLCW); and the Continuing Review Local Context Worksheet (CRLCW). This information collection is intended to provide the NIH HRPP and the NIH IRBs with information necessary for NIH to maintain regulatory compliance in its conduct of human subject protections review when an NIH IRB serves an IRB of record for multisite research and to provide high quality and timely human subject protections reviews.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annual burden hours are 790.

ESTIMATED ANNUALIZED BURDEN HOURS

Data collection activity	Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average time per response (in hours)	Estimated total annual burden hours
APR	Principal Investigator (MD or PhD)	20	1	2	40
IRLCW	Principal Investigator (MD or PhD degree) or Research Coordinator (RN, BA, MA degree) or Regulatory Staff (BA degree).	250	1	2	500
CRLCW	Principal Investigator (MD or PhD degree) or Research Coordinator (RN, BA, MA degree) or Regulatory Staff (BA degree).	250	1	1	250
Total		520	520		790

Dated: November 16, 2016.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–28140 Filed 11–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Cancer Trials Support Unit (National Cancer Institute)

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI) will publish periodic summaries of propose projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

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: Michael Montello, Pharm. D., Cancer Therapy Evaluation Program (CTEP), 9609 Medical Center Drive, MSC 9742, Rockville, MD 20850 or call non-toll-free number 240–276–6080 or Email your request, including your address to: *montellom@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Cancer Trials Support Unit (CTSU) (NCI), 0925–0624, EXTENSION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The Cancer Therapy Evaluation Program (CTEP) establishes and supports programs to facilitate the participation of qualified investigators on CTEP-supported studies, and to institute programs that minimize redundancy among grant and contract holders, thereby reducing overall cost of maintaining a robust treatment trials program. Currently guided by the efforts of the Clinical Trials Working Group (CTWG) and the Institute of Medicine (IOM) recommendations to revitalize the Cooperative Group program, CTEP has funded the Cancer Trials Support Unit (CTSU). The CTSU collects standardized forms to process site regulatory information, changes to membership, patient enrollment data, and routing information for case report forms. In addition, CTSU collects annual surveys of customer satisfaction for clinical site staff using the CTSU Help Desk, the CTSU Web site, and the Protocol and Information Office (PIO). An ongoing user satisfaction survey is in place for the Oncology Patient Enrollment Network (OPEN). User satisfaction surveys are compiled as part of the project quality assurance activities and are used to direct improvements to processes and technology.

OMB approval for an extension to the existing approval is requested for one year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 25,204.

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
CTSU IRB/Regulatory Approval Transmittal Form.	Health Care Practitioner	9,000	12	2/60	3,600
CTSU IRB Certification Form	Health Care Practitioner	8,500	12	10/60	17,000
CTSU Acknowledgement Form	Health Care Practitioner	500	12	5/60	500
Withdrawal from Protocol Participation Form	Health Care Practitioner	50	12	5/60	50

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Site Addition	Health Care Practitioner	25	12	5/60	25
CTSU Roster Update Form	Health Care Practitioner	50	12	4/60	40
CTSU Radiation Therapy Facilities Inventory Form.	Health Care Practitioner	20	12	30/60	120
CTSU IBCSG Drug Accountability Form	Health Care Practitioner	11	12	10/60	22
CTSU IBCSG Transfer of Investigational Agent Form.	Health Care Practitioner	3	12	20/60	12
Site Initiated Data Update Form	Health Care Practitioner	10	12	10/60	20
Data Clarification Form	Health Care Practitioner	341	12	20/60	1,364
RTOG 0834 CTSU Data Transmittal Form	Health Care Practitioner	60	12	10/60	120
MC0845(8233) CTSU Data Transmittal	Health Care Practitioner	50	12	10/60	100
CTSU Generic Data Transmittal Form	Health Care Practitioner	500	12	10/60	1,000
CTSU Patient Enrollment Transmittal Form	Health Care Practitioner	200	12	10/60	400
CTSU P2C Enrollment Transmittal Form	Health Care Practitioner	15	12	10/60	30
CTSU Transfer Form	Health Care Practitioner	20	12	10/60	40
CTSU System Account Request Form	Health Care Practitioner	20	12	20/60	80
CTSU Request for Clinical Brochure	Health Care Practitioner	75	12	10/60	150
CTSU Supply Request Form	Health Care Practitioner	75	12	10/60	150
CTSU Web Site Customer Satisfaction Survey.	Health Care Practitioner	275	1	15/60	69
CTSU Helpdesk Customer Satisfaction Survey.	Health Care Practitioner	325	1	15/60	81
CTSU OPEN Survey	Health Care Practitioner	60	1	15/60	15
PIO Customer Satisfaction Survey	Health Care Practitioner	100	1	5/60	8
Concept Clinical Trial Survey	Health Care Practitioner	500	1	5/60	42
Prospective Clinical Trial Survey	Health Care Practitioner	1,000	1	5/60	83
Low Accrual Clinical Trial Survey	Health Care Practitioner	1,000	1	5/60	83
Annualized Totals		22,785	237,560		25,204

Dated: November 10, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2016–28004 Filed 11–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: January 27, 2017.

Closed: 8:30 a.m. to 9:40 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Open: 9:40 a.m. to 2:00 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, Ph.D., Director, Division of Extramural Activities, NIDCD, NIH, Room 8345, MSC 9670, 6001 Executive Blvd., Bethesda, MD 20892–9670, 301–496–8693, *jordanc@nidcd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/Pages/Advisory-Groups-and-Review-Committees.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: November 16, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–27998 Filed 11–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel; Centers for AIDS Research and Developmental Centers for AIDS Research (P30).

Date: December 12–13, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Roberta Binder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G21A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5050, *rbinder@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 16, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–28042 Filed 11–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Infectious Diseases and Microbiology.

Date: November 29, 2016.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander D. Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–AA–17–006: U.S.-Russia Bilateral Collaborative Research Partnerships.

Date: December 1, 2016.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–AA–17–006: U.S.-Russia Bilateral Collaborative Research Partnerships.

Date: December 1, 2016.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 15, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–27994 Filed 11–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; CLTR SEP Review.

Date: December 1, 2016.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0287, *carolko@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.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI TOPMed: Integrative Omics Approaches for Analysis of TOPMed Data.

Date: December 2, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street NW., Washington, DC 20037.

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart,

Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892 *sunnarborgsw@nhlbi.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. 93.233, 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: November 15, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–27996 Filed 11–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Community Mental Health Services Block Grant and Substance Abuse and Prevention Treatment Block Grant FY 2018–2019 Plan and Report Guidance and Instructions (OMB No. 0930–0168)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting approval from the Office of Management and Budget (OMB) for a revision of the 2016–17 Community Mental Health Services Block Grant (MHBG) and Substance Abuse Prevention and Treatment Block Grant (SABG) Plan and Report Guidance and Instructions.

Currently, the SABG and the MHBG differ on a number of their practices (*e.g.,* data collection at individual or aggregate levels) and statutory authorities (*e.g.,* method of calculating MOE, stakeholder input requirements for planning, set asides for specific populations or programs, etc.). Historically, the Centers within SAMHSA that administer these block grants have had different approaches to application requirements and reporting. To compound this variation, states have different structures for accepting, planning, and accounting for the block grants and the prevention set aside within the SABG. As a result, how these dollars are spent and what is known about the services and clients that receive these funds varies by block grant and by state.

Increasingly, under the Affordable Care Act, more individuals are eligible for Medicaid and private insurance. This expansion of health insurance coverage will continue to have a significant impact on how State Mental Health Authorities (SMHAs) and Single State Agencies (SSAs) use their limited resources. In 2009, more than 39 percent of individuals with serious mental illnesses (SMI) or serious emotional disturbances (SED) were uninsured. Sixty percent of individuals with substance use disorders whose treatment and recovery support services were supported wholly or in part by SAMHSA block grant funds were also uninsured. A substantial proportion of this population has gained health insurance coverage since enactment of the Affordable Care Act and now has various outpatient and other services covered through Medicaid, Medicare, or private insurance. However, coverage provided by these plans and programs do not necessarily provide access to the full range of support services needed to achieve and maintain recovery for most of these individuals and their families.

Given these changes, SAMHSA has conveyed that block grant funds be directed toward four purposes: (1) To fund priority treatment and support services for individuals without insurance or who cycle in and out of health insurance coverage; (2) to fund those priority treatment and support services not covered by Medicaid, Medicare or private insurance offered through the exchanges and that demonstrate success in improving outcomes and/or supporting recovery; (3) to fund universal, selective and targeted prevention activities and services; and (4) to collect performance and outcome data to determine the ongoing effectiveness of behavioral health prevention, treatment and recovery support services and to plan the implementation of new services on a nationwide basis.

To help states meet the challenges of 2018 and beyond, and to foster the implementation and management of an integrated physical health and mental health and addiction service system, SAMHSA must establish standards and expectations that will lead to an improved system of care for individuals with or at risk of mental and substance use disorders. Therefore, this application package includes fully exercising SAMHSA's existing authority regarding states', territories' and the Red Lake Band of the Chippewa Tribe's (subsequently referred to as ''states'') use of block grant funds as they fully integrate behavioral health services into the broader health care continuum.

Consistent with previous applications, the FY 2018–2019 application has sections that are required and other sections where additional information is requested. The FY 2018–2019 application requires states to submit a face sheet, a table of contents, a behavioral health assessment and plan, reports of expenditures and persons served, an executive summary, and funding agreements and certifications. In addition, SAMHSA is requesting information on key areas that are critical to the states success in addressing health care integration. Therefore, as part of this block grant planning process, SAMHSA is asking states to identify both their promising or effective strategies as well as their technical assistance needs to implement the strategies they identify in their plans for FYs 2018 and 2019.

To facilitate an efficient application process for states in FYs 2018–2019, SAMHSA convened an internal workgroup to review and modify the application for the block grant planning section. In addition, SAMHSA utilized the questions and requests for

clarification from representatives from SMHAs and SSAs to inform the proposed changes to the block grants. Based on these discussions with states, SAMHSA is proposing several changes to the block grant programs as discussed in greater detail below.

Changes to Assessment and Planning Activities

The proposed revisions reflect changes within the planning section of the application. The most significant change involves a movement away from a request for multiple narrative descriptions of the state's activities in a variety of areas to a more quantitative response to specific questions, reflecting statutory or regulatory requirements where applicable, or reflecting specific uses of block grant funding. In addition, to respond to the requests from states, the required and requested sections have been clearly identified.

The FY 2016–2017 application sections that gave states policy guidance on the planning and implementation of system issues which were not authorized services under either block grant have been eliminated to avoid confusion. In addition, the statutory criteria which govern the plan, report and application have been included in the document as references.

Other specific proposed revisions are described below:

• *Health Care System, Parity and Integration*—This section is a consolidation of the FY 2016–2017 sections on the Affordable Care Act, health insurance marketplace, parity, enrollment and primary and behavioral health care integration. It is vital that SMHAs and SSAs programming and planning reflect the strong connection between behavioral and physical health. Fragmented or discontinuous care may result in inadequate diagnosis and treatment of both physical and behavioral conditions, including co-occurring disorders. Health care professionals, consumers of mental, substance use disorders, co-occurring mental, and substance use disorders treatment recognize the need for improved coordination of care and integration of primary and behavioral health care. Health information technology, including electronic health records (EHRs), and telehealth are examples of important strategies to promote integrated care. Use of EHRs—in full compliance with applicable legal requirements—may allow providers to share information, coordinate care and improve billing practices.

• *Evidenced-Based Practices for Early Intervention for the MHBG*—In its FY 2016 appropriation, SAMHSA was directed to require that states set aside 10 percent of their MHBG allocation to support evidence-based programs that provide treatment to those with early SMI including but not limited to psychosis at any age. SAMHSA worked collaboratively with the National Institute on Mental Health (NIMH) to review evidence showing efficacy of specific practices in ameliorating SMI and promoting improved functioning. NIMH has released information on Components of Coordinated Specialty Care (CSC) for First Episode Psychosis. Results from the NIMH funded *Recovery After an Initial Schizophrenia Episode (RAISE)* initiative, a research project of the NIMH, suggest that mental health providers across multiple disciplines can learn the principles of CSC for First Episode of Psychosis (FEP), and apply these skills to engage and treat persons in the early stages of psychotic illness.

States can implement models across a continuum, which have demonstrated efficacy, including the range of services and principles identified by NIMH. Utilizing these principles, regardless of the amount of investment, and with leveraging funds through inclusion of services reimbursed by Medicaid or private insurance, every state will be able to begin to move their system toward earlier intervention, or enhance the services already being implemented.

Other Changes

While the statutory deadlines and block grant award periods remain unchanged, SAMHSA encourages states to turn in their application as early as possible to allow for a full discussion and review by SAMHSA. Applications for the MHBG-only is due no later than September 1, 2017. The application for SABG-only is due no later than October 1, 2017. A single application for MHBG *and* SABG is due no later than September 1, 2017.

Estimates of Annualized Hour Burden

The estimated annualized burden for the uniform application is 33,374 hours. Burden estimates are broken out in the following tables showing burden separately for Year 1 and Year 2. Year 1 includes the estimates of burden for the uniform application and annual reporting. Year 2 includes the estimates of burden for the recordkeeping and annual reporting. The reporting burden remains constant for both years.

TABLE 1—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 1

Substance Abuse Prevention and Treatment and Community Mental Health Services Block Grants

Authorizing legislation SABG	Authorizing legislation MHBG	Implementing regulation	Number of respondent	Number of responses per year	Number of hours per response	Total hours
Reporting: Standard Form and Content— 42 U.S.C. 300x–32(a).						
SABG:						
Annual Report	.....	.....	.....	.....	.....	11,160
42 U.S.C. 300x–52(a)	.....	45 CFR 96.122(f)	60	1		
42 U.S.C. 300x–30–b	.....	.....	5	1		
42 U.S.C. 300x–30(d)(2).	.....	45 CFR 96.134(d)	60	1		
MHBG:						
Annual Report—	.....	.....	.....	.....	.....	10,974
	42 USC § 300x–6(a) ..... 42 U.S.C. 300x–52(a).	.....	59	1		
	42 U.S.C. 300x–4(b)(3)B ..	.....	59	1		
State Plan (Covers 2 years)						
SABG elements:						
42 U.S.C. 300x–22(b)	.....	45 CFR 96.124(c)()1)	60	1		
42 U.S.C. 300x–23	.....	45 CFR 96.126(f)	60	1		

TABLE 1—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 1—Continued

Substance Abuse Prevention and Treatment and Community Mental Health Services Block Grants						
Authorizing legislation SABG	Authorizing legislation MHBG	Implementing regulation	Number of respondent	Number of responses per year	Number of hours per response	Total hours
42 U.S.C. 300x–24		45 CFR 96.127(b)	60	1		
42 U.S.C. 300x–27		45 CFR 96.131(f)	60	1		
42 U.S.C. 300x–29		45 CFR 96.133(a)	60	1		
42 U.S.C. 300x–32(b)		45 CFR 96.122(g)	60	1	120	7,200
MHBG elements:						
	42 U.S.C. 300x–1(b)		59	1	120	7,080
	42 U.S.C. 300x–1(b)(11)		59	1		
	42 U.S.C. 300x–2(a)		59	1		
Waivers						3,240
42 U.S.C. 300x–24(b)(5)(B).			20	1		
42 U.S.C. 300x–28(d)		45 CFR 96.132(d)	5	1		
42 U.S.C. 300x–30(c)		45 CFR 96.134(b)	10	1		
42 U.S.C. 300x–31(c)			1	1		
42 U.S.C. 300x–32(c)			7	1		
42 U.S.C. 300x–32(e)			10			
	300x–2(a)(2)		10			
	300x–4(b)(3)		10			
	300x–6(b)		7			
Recordkeeping—						
42 U.S.C. 300x–23	42 U.S.C. 300x–3	45 CFR 96.126(c)	60/59	1	20	1,200
42 U.S.C. 300x–25		45 CFR 96.129(a)(13)	10	1	20	200
42 U.S.C 300x–65		42 CFR Part 54	60	1	20	1,200
Combined Burden						42,254

Report
300x–52(a)—Report.
300x–30(b)—Exclusion of Certain Funds (SABG).
300x–30(d)(2)—Maintenance of Effort (SABG).
300x–4(b)(3)B—Maintenance of Effort (MHBG).
State Plan—SABG
300x–22(b)—Allocations for Women.
300x–23—Intravenous Substance Abuse.
300x–24—Requirements Regarding TB and HIV.
300x–27—Priority in Admissions to Treatment.
300x–29—Statewide Assessment of Need.
300x–32(b)—State Plan.
State Plan—MHBG
42 U.S.C. 300x–1(b)—Criteria for Plan.
42 U.S.C. 300x–1(b)(11)—Incidence and prevalence in the state adults with SMI and Children with SED.
42 U.S.C. 300x–2(a)—Allocations for Systems Integrated Services for Children.
Waivers—SABG
300x–24(b)(5)(B)—Rural requirement regarding EIS/HIV.
300x–28(d)—Additional Agreements.
300x–30(c)—Maintenance of Effort.
300x–31(c)—Construction.
300x–32(c)—Certain Territories.
300x–32(e)—Waiver amendment for 1922, 1923, 1924 and 1927.
Waivers—MHBG
300x–2(a)(2)—Allocations for Systems Integrated Services for Children.
300x–4(b)(3)—Waiver of Statewide Maintenance of Effort.
300x–6(b)—Waiver for Certain Territories.
Recordkeeping
300x–23—Waiting list.
300x–25—Revolving loan fund.
300x–65—Charitable Choice.

TABLE 2—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 2

	Number of respondents	Number of responses per year	Number of hours per response	Total hours
Reporting:				
SABG	60	1	186	11.160
MHBG	59	1	186	10,974
Recordkeeping	60/59	1	40	2,360
Combined Burden				24,494

The total annualized burden for the application and reporting is 33,374 hours (42,254 + 24,494 = 66,748/2 years = 33,374).
Link for the application: *http://www.samhsa.gov/grants/block-grants.*

Send all comments via email to *blockgrants@samhsa.hhs.gov.* Comments should be received by January 23, 2017.

Summer King,

Statistician.

[FR Doc. 2016–28043 Filed 11–21–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5913–N–33]

60-Day Notice of Proposed Information Collection: Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 23, 2017.

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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. 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 FURTHER INFORMATION CONTACT: Cheryl Walker, Director, Home Valuation Policy Division, Department of Housing and Urban Development, 451-7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. 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.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Home Equity Conversion Mortgage (HECM) Insurance Application for the Origination of Reverse Mortgages and Related Documents.

OMB Approval Number: 2502–0524.

Type of Request: Revision.

Form Number: HUD–92901, HUD–92902, HUD–92051, HUD–92561, HUD–92800.5b, HUD–92900–A, HUD–1, HUD–1Addendum, Fannie Mae (FNMA)–1009, FNMA–1025, FNMA–1003, FNMA–1004, FNMA–1004c, FNMA–1073.

Description of the need for the information and proposed use: The Home Equity Conversion Mortgage (HECM) program is the Federal Housing Administration's (FHA) reverse mortgage program that enables seniors who have equity in their homes to withdraw a portion of the accumulated equity. The intent of the HECM Program is to ease the financial burden on elderly homeowners facing increased health, housing, and subsistence costs at a time of reduced income. The currently approved information collection is necessary to screen mortgage insurance applications in order to protect the FHA insurance fund and the interests of consumers and potential borrowers.

Respondents: 1,603.

Estimated Number of Respondents: 1,603.

Estimated Number of Responses: 80,000.

Frequency of Response: Occasionally.

Average Hours per Response: 3.41.

Total Estimated Burdens: $11,366,400.

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.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 10, 2016.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing Associate Deputy Federal Housing Commissioner.

[FR Doc. 2016–28130 Filed 11–21–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2016–N189; FXES11140200000–178–FF02ENEH00]

Receipt of an Incidental Take Permit Application To Participate in the Amended American Burying Beetle Oil and Gas Industry Conservation Plan in Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: Under the Endangered Species Act, as amended (Act), we, the U.S. Fish and Wildlife Service, invite the public to comment on an incidental take permit application for federally listed American burying beetle (ABB) take resulting from activities associated with oil and gas well field infrastructure geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning in Oklahoma. If approved, the permit would be issued under the approved *Amended Oil and Gas Industry Conservation Plan (ICP)Associated with Issuing Endangered Species Act Section 10(a)(1)(B) American Burying Beetle Permits Oklahoma.*

DATES: To ensure consideration, written comments must be received on or before December 22, 2016.

ADDRESSES: You may obtain copies of all documents and submit comments on the applicant's ITP application by one of the following methods. Please refer to the proposed permit number when requesting documents or submitting comments.

○ *U.S. Mail:* U.S. Fish and Wildlife Service, Division of Endangered Species—HCP Permits, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

○ *Electronically: fw2_hcp_permits@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Marty Tuegel, Branch Chief, by U.S. mail at: U.S. Fish and Wildlife Service, Environmental Review Division, P.O. Box 1306, Room 6034, Albuquerque, NM 87103; or by telephone at 505–248–6651.

SUPPLEMENTARY INFORMATION:

Introduction

Under the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.;* Act), we, the U.S. Fish and Wildlife Service, invite the public to comment on an incidental take permit (ITP) application for federally listed ABB (*Nicrophorus americanus*) take resulting from oil and gas well field infrastructure geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning, as well as oil and gas gathering, transmission and distribution pipeline infrastructure construction, maintenance, operation, repair, decommissioning, and reclamation in Oklahoma. If approved, the permit would be issued to the applicant under the *Amended Oil and Gas Industry Conservation Plan (ICP) Associated with Issuing Endangered Species Act Section 10(a)(1)(B) American Burying Beetle Permits Oklahoma.* The original ICP was approved on May 21, 2014 (FONSI notice publication was on July 25, 2014; 79 FR 43504). The draft amended ICP was made available for comment on March 8, 2016 (81 FR 12113), and approved on April 13, 2016. The ICP and the associated environmental assessment/finding of no significant impact are available on the Web site at *http://www.fws.gov/southwest/es/oklahoma/ABBICP.* However, we are no longer taking comments on these finalized, approved documents.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies, and the public to comment on the following application under the ICP, for incidental federally listed ABB take. Please refer to the appropriate permit number (*e.g.,* TE–123456) when requesting application documents and when submitting comments. Documents and other information the applicants have submitted with this application are available for review, subject to Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

Permit TE11102C

Applicant: Performance Petroleum Company, Barnsdall, OK

Applicant requests an amended permit for oil and gas upstream and midstream production, including oil and gas well field infrastructure geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning, as well as of oil and gas gathering, transmission and distribution pipeline infrastructure construction, maintenance, operation, repair, decommissioning, and reclamation in Oklahoma.

Comments Publically Available

Written comments we receive become part of the public record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the Act (16 U.S.C. 1531 *et seq.*) section 10(c) and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Joy E. Nicholopoulos,

Acting, Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2016–28057 Filed 11–21–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2016–N195; FXES11130100000–178–FF01E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for recovery permits to conduct activities with the purpose of enhancing the survival of endangered species. With some exceptions, the Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by December 22, 2016.

ADDRESSES: Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address, or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife

species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following applications. Please refer to the permit number for the application when submitting comments.

Documents and other information submitted with these applications are available for review by request from the Program Manager for Restoration and Endangered Species Classification at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–08598C

Applicant: The Institute for Bird Populations, Point Reyes Station, California

The applicant requests a new permit to take (survey, monitor, capture, handle, band, collect bio-samples, attach transmitters, and release) Friendly ground-dove (*Gallicolumba stairi*) in conjunction with research, survey, and population monitoring activities in American Samoa, for the purpose of enhancing the species' survival.

Permit Number: TE–04236C

Applicant: James W. Gore, Paragould, Arizona

The applicant requests a new permit to take (survey, monitor, identify roosts, capture, handle, measure, band, attach transmitters, and release) Hawaiian hoary bat (*Lasiurus cinereus semotus*) in conjunction with research, survey, and population monitoring activities in Hawai'I, for the purpose of enhancing the species' survival.

Permit Number: TE–146777

Applicant: Arleone Dibben-Young, Kaunakakai, Hawaii

The applicant requests a permit amendment to take (mark with leg flags, collect blood and feather samples) the ae'o or Hawaiian stilt (*Himantopus mexicanus knudseni*) on the island of Molokai, Hawai'i, for the purposes of scientific research and enhancing the species' survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Theresa E Rabot,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2016–28055 Filed 11–21–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2016–N171]; [FXES11120100000–167–FF01E00000]

Proposed Habitat Conservation Plan and Draft Environmental Assessment for Streaked Horned Lark; Port of Portland Properties, Portland, Oregon

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of availability; notice of permit application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an incidental take permit application from the Port of Portland pursuant to the Endangered Species Act of 1973, as amended (ESA). The requested permit would authorize the take of the streaked horned lark. The permit application includes a proposed habitat conservation plan (HCP) that describes the activities that would result in the incidental taking, and the measures the applicant will take to minimize and mitigate for the potential adverse impacts to streaked horned larks. We also announce the availability of a draft environmental assessment (EA) that has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). We are making the permit application package, including the HCP, and draft EA available for public review and comment.

DATES: To ensure consideration, written comments must be received from interested parties no later than January 6, 2017.

ADDRESSES: To request further information or submit written comments, please use one of the following methods, and note that your information request or comments are in reference to the ''Port of Portland HCP.''

- *Internet:* Documents may be viewed on the Internet at *http://www.fws.gov/oregonfwo/.*
- *Email: PDXHCPcomments@fws.gov.* Include ''Port of Portland HCP'' in the subject line of the message or comments.
- *U.S. Mail:* State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service; 2600 SE 98th Avenue, Suite 100; Portland, OR 97266.
- *Fax:* 503–231–6195, Attn: Port of Portland HCP.
- *In-Person Drop-off, Viewing, or Pickup:* Comments and materials received will be available for public inspection, by appointment (necessary for viewing or picking up documents only), during normal business hours at the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service; 2600 SE 98th Avenue, Suite 100; Portland, OR 97266; telephone 503–231–6179. Written comments can be dropped off during regular business hours at the above address on or before the closing date of the public comment period (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Richard Szlemp, U.S. Fish and Wildlife Service (see **ADDRESSES**); telephone: 503–231–6179; facsimile: 503–231–6195. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We have received an incidental take permit application from the Port of Portland pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA). The requested permit would authorize the take of the streaked horned lark (*Eremophila alpestris strigata*). The permit application includes a proposed habitat conservation plan (HCP) that describes the activities that would result in the incidental taking, and the measures the applicant will take to minimize and mitigate for the potential adverse impacts to streaked horned larks. We also announce the availability of a draft environmental assessment (EA) that has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.;* NEPA). We are making the permit application package,

including the HCP, and draft EA available for public review and comment.

Background

Section 9 of the ESA prohibits the take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term ''harm,'' as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in our regulations as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Under specified circumstances, we may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for threatened species are at 50 CFR 17.32. Section 10(a)(1)(B) of the ESA contains provisions for issuing such incidental take permits to non-Federal entities for the take of federally listed species, provided the following criteria are met:

(1) The taking will be incidental;

(2) The applicant will prepare a conservation plan that, to the maximum extent practicable, identifies the steps the applicant will take to minimize and mitigate the impact of such taking;

(3) The applicant will ensure that adequate funding for the plan will be provided;

(4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(5) The applicant will carry out any other measures that we may require as being necessary or appropriate for the purposes of the plan

We listed the streaked horned lark as a threatened species on October 3, 2013 (78 FR 61452), with critical habitat, and established a special rule under section 4(d) of the ESA to exempt certain airport maintenance activities and operations, agricultural activities, and noxious weed control activities from the take prohibitions of the ESA. Historically, nesting habitat was found on western Oregon prairies, and on sandy beaches and spits along the Columbia and Willamette Rivers. Today, the streaked horned lark nests in a broad range of habitats, including native prairies, coastal dunes, fallow and active agricultural fields, wetland mudflats, sparsely vegetated edges of grass fields, recently planted Christmas tree farms with extensive bare ground, fields denuded by overwintering Canada geese, gravel roads or gravel shoulders of lightly traveled roads, airports, and dredge deposition sites in the lower Columbia River. Wintering streaked horned larks use habitats that are very similar to breeding habitats.

Proposed Action

We propose to approve the HCP and to issue a permit with a term of 30 years to the Port of Portland for incidental take of streaked horned larks caused by covered activities, if permit issuance criteria are met. The Port of Portland owns and manages lands occupied by nesting and wintering streaked horned larks, including undeveloped lands within the Rivergate Industrial District (Rivergate) and at the Portland International Airport (PDX), including the PDX Intermediate Zone and Southwest Quadrant (SW Quad), collectively, the project areas. Incidental take of up to a total of 46 streaked horned lark nesting pairs over a 30-year permit term may occur. Incidental take would be associated with future commercial and industrial land development within the project areas, as well as aviation wildlife hazard management activities within the PDX Intermediate Zone and SW Quad. The Port of Portland would create the Sandy Island Conservation Area to mitigate for the anticipated take of streaked horned lark.

The Rivergate Project Area is located within the Rivergate Industrial District in Portland, Oregon, on the peninsula in north Portland bordered by the Columbia River, the Willamette River, and their confluence. The Rivergate Industrial District is Portland's largest industrial park, including 2,800 acres of warehousing, distribution, manufacturing, and processing facilities. The land itself was created or improved for development by the Port with the placement of fill material (mostly sandy dredged material) to elevate building sites to the surrounding grade and provide a substrate suitable for development. The Rivergate Project Area consists of approximately 120.5 acres across six undeveloped parcels that are scattered among other developed parcels within the industrial district, of which approximately 40.7 acres is considered suitable habitat for the streaked horned lark. The Rivergate parcels are bordered by roads, rail lines, parking lots, industrial buildings, and the Columbia Slough.

The creation of suitable habitat for streaked horned larks at Rivergate was an unintended consequence of the development of the Rivergate Industrial Park and the Port of Portland's ongoing use and maintenance of the site. The Port of Portland's preparation of building sites within the Rivergate Industrial Park, including the parcels of the Rivergate Project Area, created large open areas with exposed soils that have proved to be attractive to the streaked horned lark. These conditions have been largely maintained by routine site management, such as occasional mowing and discing, to keep parcels ready for development and to generally reduce seasonal fire hazards within the industrial district. This site is planned to be developed for industrial use within one to two years. Most of the Port of Portland's aviation wildlife hazard management activities occur within the 4,867-acre PDX Intermediate Zone comprising:

- The area within the airfield perimeter fence, a 300-foot buffer around the perimeter fence, and runway protection zones (together, the Primary Zone); and
- Port of Portland owned airport land outside of the Primary Zone, much of which is under the approach or transitional surfaces of the runways.

Land management decisions within the Primary Zone are subject to the single dedicated land use of operating an airport and the associated public aviation safety concerns. The Port of Portland's land management objectives for the remainder of the PDX Intermediate Zone are similar and land uses in this area are intended to be compatible with aviation public safety. Throughout the PDX Intermediate Zone, wildlife management is critical to airport safety and the Port of Portland designs and implements its Federal Aviation Administration approved wildlife hazard management plan with the objective of eliminating or reducing to the extent practicable all attractants for wildlife species of aviation concern, including streaked horned larks.

Most of the PDX Intermediate Zone is either developed or paved or is regularly mowed or disced to maintain low, sparse herbaceous cover or bare ground. This regular maintenance to eliminate or reduce aviation wildlife hazards, in accordance with the wildlife hazard management plan, promotes conditions consistent with suitable streaked horned lark habitat. Most of the undeveloped upland portions of the PDX

Intermediate Zone have the potential to be used by streaked horned larks, although the specific extent of currently suitable streaked horned lark habitat within the PDX Intermediate Zone is unknown.

The SW Quad is an approximately 204.7-acre open field within the PDX Intermediate Zone and immediately adjacent to PDX runways and taxiways. For this reason, the SW Quad is an optimal location for future PDX airport infrastructure. The SW Quad is also bordered by paved roads, other PDX commercial buildings, and open space lands associated with the Riverside Country Club and the Broadmoor Golf Course.

Historically, the SW Quad contained extensive wetlands. However, the Port of Portland filled these wetlands (in accordance with applicable regulations) between 1994 and 2005 and installed a perforated pipe drainfield to prevent the recurrence of wetland habitat attractive to wildlife species of concern to aviation safety. The SW Quad is currently an open expanse of mostly barren fill material with sparse herbaceous weedy plants. Much of the SW Quad is mowed or disced annually to deter and discourage avian species of concern to aviation safety from the airfield and surrounding properties and to reduce the risk of wildlife/aircraft collisions; however, this management inadvertently created and currently maintains suitable streaked horned lark habitat. Of the 204.7 acres at the SW Quad, approximately 77 acres are considered suitable habitat for the streaked horned lark. This site is anticipated to be developed about 20 or more years from now.

Sandy Island is located in the Columbia River at River Mile 75.8, directly across from the public boat ramp at the Port of Kalama in unincorporated Columbia County, Oregon. Sandy Island is composed of approximately 340 acres. Approximately 312 acres of Sandy Island is human-made by historic and current dredged material placement. This portion of the island is owned by the Oregon Department of State Lands (DSL). The original island landform is approximately 28 acres and is in private ownership. Because Sandy Island is within waters of the state, DSL regulates the natural resources of the island. Sandy Island is open to the public and accessible by boat.

The proposed Sandy Island Conservation Area consists of piled dredged sand with a relatively flat, sparsely vegetated plateau. The plateau is perched 40 to 50 feet above the shoreline and includes a small grove of approximately 20 black cottonwood (*Populus trichocarpa*) trees and a small depression along the northern portion of the site. Vegetation is partly sparse and the land cover is a mosaic of bare sand, grasses, forbs, invasive Scot's broom (*Cytisus scoparius*) shrubs, mosses, and lichens, but also transitions abruptly to forested wetlands and riparian habitat. The repeated placement of dredged material at the proposed Sandy Island Conservation Area, with the most recent depositions occurring between 1997 and 2011, created habitat for the streaked horned lark that has been occupied by three to five nesting pairs in recent years.

No additional dredged material placement is anticipated, as this site is considered to be full. Without recurring site disturbance and/or vegetation management, natural succession of the vegetation will degrade existing streaked horned lark habitat and is expected to cause the loss of suitable habitat at this site in the near future. The 32.0 acres of the proposed Sandy Island Conservation Area is designated critical habitat for the streaked horned lark.

Proposed mitigation measures consist of the Port of Portland refraining from conducting vegetation management within Rivergate, the SW Quad, and the proposed Sandy Island Conservation Area during the streaked horned lark nesting season (April 1 to August 31) to avoid directly killing or wounding individuals or causing nest abandonment. Interim conservation measures consist of the reinstatement or continuation of occasional mowing or discing at Rivergate, and continued implementation of similar activities at SW Quad for existing streaked horned lark habitat. The Port of Portland will also continue to mow roadside perimeters and will maintain Jersey barriers currently in place as an interim conservation measure at Rivergate to prevent unwarranted site access and to reduce the risk of fire. These activities satisfy the Port of Portland's needs to properly maintain its properties, but incidentally benefit the streaked horned lark by maintaining the characteristics of suitable habitat at Rivergate and the SW Quad until development occurs. The conservation benefit of this routine site management allows Rivergate and the SW Quad to maintain more habitat for use by streaked horned larks over the duration of the incidental take permit than would likely be achieved in the absence of these activities.

The Port of Portland will enter into a 30-year term conservation easement on the Sandy Island Conservation Area with DSL. Immediately following the issuance of the incidental take permit, the Port of Portland will provide for the protection, management, and monitoring of approximately 32 acres of currently suitable and restorable streaked horned lark habitat at the proposed Sandy Island Conservation Area to maintain and attract additional nesting streaked horned larks as added mitigation for the impacts of the requested incidental taking of streaked horned larks.

National Environmental Policy Act Compliance

The proposed issuance of a section 10(a)(1)(B) permit under the Act is a Federal action that triggers the need for compliance with NEPA. We have prepared a draft EA to analyze the environmental impacts of two alternatives related to the issuance of a permit and implementation of the conservation program under the proposed HCP. The two alternatives are the No Action alternative and the proposed action (see Proposed Action described above). We also considered several other alternatives that are briefly described in the draft EA but dismissed them from detailed analysis for the reasons described in the draft EA.

Under the No Action alternative, an incidental take permit would not be issued by the Service, and the Port of Portland's proposed HCP would not be approved. Any incidental take outside the 4(d) Special Rule exemption would not be authorized and the Port of Portland would assume all legal risks for unauthorized take without an incidental take permit.

Under the No Action Alternative, the Port of Portland would not use the project areas in a way that would result in the incidental taking of streaked horned larks outside activities covered under the 4(d) Special Rule Exemption. The Port of Portland has unintentionally created suitable streaked horned lark habitat within the Project Areas. The Port of Portland would cease active site management contributing to the creation of suitable streaked horned lark habitat, and allow the Project Areas to naturally transition out of suitable habitat as vegetation increases in density and height. Once streaked horned larks no longer breed on site at Rivergate, and streaked horned larks do not occupy the area, the Port of Portland would move forward in developing the parcels. The Port of Portland would continue to rely on the authority of the 4(d) Special Rule to continue aviation wildlife hazard management activities on SW Quad, likely changing the type of management strategies to those that do not favor the creation or maintenance of streaked

horned lark habitat. It is expected that streaked horned larks would leave the site before development of the SW Quad occurs. The Port of Portland would not establish the Sandy Island Conservation Area to provide conservation benefits to streaked horned larks. Without active site management to maintain and improve suitable streaked horned lark habitat at this site, increasing levels of encroaching vegetation would naturally transition out of suitable and occupied habitat.

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed Federal action.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation, will be available for public inspection by appointment, during normal business hours, at our Oregon Fish and Wildlife Office (see **ADDRESSES**).

Next Steps

After considering public comments, we will make a decision regarding whether the proposed HCP and draft EA meet the requirements of section 10(a)(1)(B) of the ESA and the requirements of NEPA. We will not make a final decision on our proposed action until after the end of the 45-day public comment period on this notice, and we will fully consider all comments we receive during the public comment period. If we determine that all the requirements are met, we would issue the incidental take permit under the authority of section 10(a)(1)(B) of the ESA and sign a finding of no significant impact following the requirements of NEPA.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*), and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.32, and 40 CFR 1506.6, respectively).

Theresa Rabot,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2016–28064 Filed 11–21–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MTM 109072]

Notice of Application for Withdrawal and Notification of Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior withdraw, for a 20-year term, approximately 30,370 acres of National Forest System lands from location and entry under the United States mining laws, but not from leasing under mineral and geothermal laws. The purpose of the withdrawal is to protect and preserve the scenic integrity, important wildlife corridors, and high quality recreation values of the Emigrant Crevice area located in the Custer Gallatin National Forest, Park County, Montana. Publication of this notice temporarily segregates the lands for up to 2 years from location and entry under the United States mining laws while the withdrawal application is being processed. The lands have been and will remain open to such forms of disposition as may be allowed by law on National Forest System lands, and to leasing under the mineral and geothermal leasing laws. This notice also gives the public an opportunity to comment on the withdrawal application, and announces the date, time and location of the public meeting.

DATES: Comments must be received by February 21, 2017. The USFS will hold a public meeting in connection with the proposed withdrawal on January 18, 2017.

ADDRESSES: Comments should be sent to the Forest Supervisor, Custer Gallatin National Forest, P.O. Box 130, 10 East Babcock Avenue, Bozeman, Montana 59771; or the Bureau of Land Management, Montana State Office (MT924), 5001 Southgate Drive, Billings, Montana 59101.

FOR FURTHER INFORMATION CONTACT: Mary Erickson, Forest Supervisor, Custer Gallatin National Forest, 406–587–6949 or Deborah Sorg, BLM Montana/Dakotas State Office, 406–896–5045 during regular business hours, 8:00 a.m. to 4:30 p.m. Monday through Friday, except holidays. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact either of the above individuals. The Service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The applicant is the USFS. The application requests the Secretary of the Interior to withdraw, subject to valid existing rights, the following described lands from location and entry under the United States mining laws, but not from leasing under the mineral and geothermal leasing laws, for a period of 20 years, to protect and preserve the area for its scenic integrity, important wildlife corridors, and high quality recreation values. Portions of these lands are unsurveyed and the acres were obtained from protraction diagrams or calculated using the Geographic Information System.

Custer Gallatin National Forest

Principal Meridian, Montana

T. 6 S., R. 8 E.,
Secs. 34 and 35;
Sec. 36, lots 1 thru 8, W½NE¼, W½, and SE¼SE¼.
T. 7 S., R. 8 E.,
Sec. 10, lot 1, N½, N½SW¼, SE¼SW¼, and SE¼;
Sec. 11, S½;
Sec. 12, S½;
Secs. 13, 14, and 15;
Protracted blocks 37 thru 41.
T. 6 S., R. 9 E.,
Sec. 31, lots 1 thru 6, NE¼, E½NW¼, NE¼SE¼, and W½SE¼;
Sec. 32, S½;
Sec. 33, S½.
T. 7 S., R 9 E.,
Sec. 9, unsurveyed;
Sec. 10, W½, unsurveyed;
Secs. 16 and 17, unsurveyed;
Protracted blocks 39 thru 45.
T. 8 S., R. 9 E.,
Secs. 22 thru 26, unsurveyed, those portions not within the Absaroka-Beartooth Wilderness;

Protracted blocks 41 thru 46, those portions not within the Absaroka-Beartooth Wilderness;
Protracted blocks 47 and 48;
Protracted block 49, that portion not within the Absaroka-Beartooth Wilderness;
H.E.S. No. 856.
T. 9 S., R. 9 E.,
Secs. 1 and 2, those portions not within the Absaroka-Beartooth Wilderness;
Sec. 3, lots 1, 2, and 3, NE¼, N½NW¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 4, lot 2, lots 5 thru 9, lots 12 thru 15, N½NE¼, and NW¼;
Sec. 5, lots 1 thru 6, N½NE¼, SW¼NE¼, NW¼, and W½SE¼;
Sec. 6, lot 1, lots 5 thru 12, NE¼, and NE¼NW¼;
Sec. 7, lots 5 and 6, S½NE¼, E½NW¼, E½SW¼, and SE¼;
Sec. 8, lots 1, 4, 5, 6, 9, and 10, SW¼NW¼, and SW¼, excepting Wormsbecker Boundary Adjustment Tract, Certificate of Survey No. 792BA, filed in Park County, Montana, July 22, 1985, Document No. 186782;
Sec. 9, lots 1, 3, and 4, lots 9 thru 15, and S½SE¼;
Sec. 10, lots 1 and 2, N½, SW¼, and N½SE¼;
Sec. 11, lots 1, 2, 3, 5, and 6, N½NE¼, NW¼, N½SW¼, SE¼SW¼, SW¼SE¼, those portions not within the Absaroka-Beartooth Wilderness;
Sec. 14, lots 1 thru 8, NW¼NE¼, SE¼SW¼, and W½SW¼, those portions not within the Absaroka-Beartooth Wilderness;
Sec. 15, lots 1 thru 9, NW¼, and W½SW¼;
Sec. 16, lots 1 thru 5, E½, N½NW¼, and SW¼NW¼;
Sec. 17, lots 2 and 3, lots 5 thru 8, SE¼NE¼, NW¼NW¼, SE¼SW¼, and SE¼;
Sec. 18, lots 1 thru 6, NE¼, E½NW¼, E½SW¼, and W½SE¼;
Sec. 19, lots 1 thru 14, NE¼NW¼, and NE¼SE¼, including the bed of the Yellowstone River;
Sec. 20, lots 2 thru 5, N½SW¼, and N½SE¼;
Sec. 21;
Sec. 22, lots 2 thru 13, W½NW¼, and NW¼SW¼;
Sec. 23, lots 1 thru 10, NE¼, and N½SE¼, those portions not within the Absaroka-Beartooth Wilderness;
Tracts 37, 38, and 39;
H.E.S. No. 253.

The areas described aggregate approximately 30,370 acres of National Forest System lands in Park County.

The following described non-Federal lands and non-Federal mineral rights are within the exterior boundary of the proposed withdrawal application. If title to these non-Federal lands or non-Federal mineral rights is subsequently acquired by the United States, the application requests that such acquired lands and/or mineral rights become subject to the terms and conditions of the withdrawal.

Principal Meridian, Montana

T. 6 S., R. 8 E.,
M.S. No. 10643, except that portion lying northerly of the line bet. Secs. 25 and 36;
M.S. No. 6079.
T. 7 S., R. 8 E.,
M.S. No. 8838, except that portion lying westerly of the line bet. Secs. 9 and 10.
T. 6 S., Rs. 8 and 9 E.,
M.S. No. 6078.
Tps. 6 and 7 S., Rs. 9 E.,
M.S. Nos. 4087 and 4724.
T. 7 S., R. 9 E.,
M.S. Nos. 58, 6705, 6706, 6707, 6939, 6940, 6941, 9015, 9858, and 10229.
T. 9 S., R. 9 E.,
Sec. 20, lot 1 and SW¼NW¼;
M.S. Nos. 46 and 47;
M.S. No. 44, that portion lying northerly of the E–W center line of the SE¼ of Sec. 8;
M.S. Nos. 48 and 61;
M.S. No. 62, that portion lying northerly of the E–W center line of the SE¼ of Sec. 8;
M.S. Nos. 4535, 4536, 4537, 4538, 4557, 4558, 4559, 4560, 4899, 4900, 4901, 4902, 4903, 4904, 4905, 5527, 5528, 5529, 5531, 5532, 5533, 5542, 5573A, 5573B, 5581, 5583, 5613, 5614, 5627, 5628, 5629, 5674, 5675, 5676, 5713, 5786, 5819, 5820, 6117, 6283, 6284, 6341, 6374, 6376, 6377, 6657, 6930, 6931, 6999, 7000, 7001, 7002, 7003, 7004, 7005, 7006, 7007, 7008, 7108, 8869, 8876, 9023, and 9024;
M.S. No. 9035, that portion not within the Absaroka-Beartooth Wilderness;
M.S. Nos. 9681, 9771, 9906, and 10774.

Wormsbecker Boundary Adjustment Tract, Certificate of Survey No. 792BA, filed in Park County, Montana, July 22, 1985, Document No. 186782.

The areas described aggregate approximately 1,668 acres in Park County.

The purpose of the requested withdrawal is to protect and preserve the areas scenic integrity, important wildlife corridors, and high quality recreation values. The use of a right-of-way, interagency agreement, or cooperative agreement would not adequately constrain non-discretionary uses and would not provide adequate protection for these areas.

No alternative sites are feasible because the lands subject to the withdrawal application are the lands for which protection is sought from the impacts of exploration and development under the United States mining laws. No water will be needed to fulfill the purpose of the requested withdrawal.

Records related to the application may be examined by contacting either of the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section above.

For a period until February 21, 2017, all persons who wish to submit comments, suggestions, or objections in connection with the withdrawal application may present their views in writing to the Forest Supervisor, Custer Gallatin National Forest at the address noted above. Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that a public meeting in connection with the application for withdrawal will be held at the Shane Center, 415 E Lewis St., Livingston, Montana 59407 on January 18, 2017 from 4–7 p.m. The USFS will publish a notice of the time and place in a local newspaper at least 30 days before the scheduled date of the meeting.

For a period until *November 23, 2018,* subject to valid existing rights, the National Forest System lands described in this notice will be segregated from location and entry under the United States mining laws, unless the application is denied or canceled or the withdrawal is approved prior to that date. All other activities currently consistent with the Forest plan could continue, including public recreation and other activities compatible with preservation of the character of the area, subject to discretionary approval, during the temporary segregation period.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Kimberly O. Prill,

Chief, Branch of Realty, Lands and Renewable Energy.

[FR Doc. 2016–28052 Filed 11–21–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–NSNSD–22441; PPWONRADN1, PPMRSNR1Y.NS000 (177)]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Natural Sounds/ Quiet Valuation Survey: Focus Group Pre-Test

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated respondent burden. 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. This collection is scheduled to expire on November 30, 2016. We 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.

DATES: To ensure that your comments on this ICR are considered, OMB must receive them on or before December 22, 2016.

ADDRESSES: Please direct all written comments on this ICR directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, to *OIRA_Submission@omb.eop.gov* (email) or 202–395–5806 (fax); and identify your submission as ''1024–0296 NATSOUND''. Please also send a copy of your comments 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 ''1024–0296 NATSOUND'' in the subject line. You may also access this ICR at *www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

FOR FURTHER INFORMATION CONTACT: Frank Turina, Night Skies and Natural Sounds Division, National Park Service, 1201 Oakridge Drive, Fort Collins, Colorado 80525 (mail); *Frank_Turina@nps.gov* (email). Please reference Information Collection ''1024–0296 NATSOUND'' in the subject line.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the Organic Act of 1916 (54 U.S.C.100701), the NPS is charged with conserving the scenery, natural and historic objects, and wildlife in its units. The acoustical environment or soundscape is a fundamental aspect of NPS units and critical to visitors' interaction with and interpretation of said resources. While the NPS has policies in place to monitor and manage acoustical conditions, it does not have information on how visitors value preserving natural sounds and/or reducing noise impacts. We are planning to conduct a stated-preference survey of visitors, however additional testing is needed to ensure that the future results are as reliable as possible.

Between 2011 and 2014, researchers at the U.S. Department of Transportation Volpe Center (DOT) requested and received OMB approval (OMB Control Number 1024–0269) to conduct a series of focus groups to pre-test materials for a stated-preference valuation study designed to estimate values for maintaining and enhancing natural soundscapes. The findings from the study indicated that in order to advance the project, another expert panel should be convened to determine how to address the issues raised by the focus groups. A subsequent peer review of this work commissioned by Night Skies and Natural Sounds Division (NSNSD) indicated that fundamental aspects of the survey, notably the framing, presentation and format of the valuation scenario, required restructuring. The purpose of this ICR is to request approval to continue survey development and pre-testing activities that were initiated in 2013. This continuation will involve a series of eight focus groups in two NPS units (four per unit). The intent of the focus groups is to refine and test existing survey materials. Specifically, previous pre-testing efforts indicated that further refinement and testing of stated-preference questions was necessary. Best practice guidelines in the conduct of stated-preference studies require that survey content, language and instructions be clearly understood by respondents. Failure to continue testing the instrument could possibly compromise the accuracy of information collected through the survey when it is implemented

II. Data

OMB Control Number: 1024–0269.

Title: Natural Sounds/Quiet Valuation Survey.

Type of Request: Renewal of a currently approved collection.

Affected Public: Park visitors; individual and general households.

Respondent Obligation: Voluntary.

Frequency of Collection: One time.

Estimated Number of Annual Responses: 80 respondents. This collection will involve eight two-hour focus group sessions. We estimate that each group will have at most 10 participants.

Annual Burden Hours: 160 hours; two hours per respondent.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': None.

III. Comments

A Notice was published in the **Federal Register** (81 FR 63492) on September 15, 2016, stating that we intended to request OMB approval of our information collection described above. In that Notice, we solicited public comment for 60 days ending November 23, 2013. We received the following two substantive comments in response to that Notice:

Comment #1 received October 31, 2016. ''I have reviewed the National Park Service's (NPS) Proposed Information Collection; Natural Sounds/Quiet Valuation Survey, notice and request for comments that appeared in the September 15, 2016 **Federal Register** (81 FR 63492). According to the notice, the NPS plans to conduct a stated-preference survey of visitors in two park units in order to estimate individual values for maintenance of improvement of acoustical conditions within a national park setting, including a series of focus groups in two NPS units. This ''sampling'' of two NPS units is far too small for the NPS to determine park users objections to noise inflected on our National Parks. In particular, Olympic National Park and Olympic National Forest continue to be adversely impact by U.S. Navy jets (*http://blog.seattlepi.com/seattlepolitics/2015/05/11/is-noise-from-navy-jets-a-threat-to-olympic-national-park-kilmer-wants-soundings/*). In addition, the Navy has proposed expanded its electronic warfare testing over Olympic National Park and Olympic National Forest (*http://www.military.com/daily-news/2015/11/09/navy-olympic-national-park-look-jet-noise.html*). In summary, the NPS proposed information collection will be woefully inadequate unless it includes Olympic National Park users.''

NPS response on October 31, 2016: ''Thank you for your response to the 60 day **Federal Register** Notice (81 FR 63492) dated September 15, 2016 for the Proposed Information Collection: Natural Sounds/Quiet Valuation Survey. To be clear, this request is not for the final study on this topic. This request is for sole purpose of conducting a series of focus groups at two National Parks. These focus groups will be used test the reliability and to validate the question we intend to use in the final version of the survey. In order to conduct these focus groups the request must receive OMB; therefore a **Federal Register** Notice is required. The questions will be calibrated as a result of the focus groups. We will not conduct a ''full''

survey until the questions are peer reviewed and deemed reliable by a panel of non-NPS social scientists. The final version of the survey will be submitted to OMB for review and a separate **Federal Register** Notice will be published at that time. Neither the date nor the parks to be used in the study have been determined. Thank you again and your comment and our response will be reported to OMB in our request for approval—of the focus groups.''

Comment #2 from the American Motorcyclist Association dated November 3, 2016 (received by postal mail November 7, 2016): This comment addressed the following issues: (1) Whether additional data collection is necessary, and a request for consultation in drafting language for policies addressing excessive noise; (2) A recommendation to measure vehicle noise levels according to established methods, and to consider the implications of alternative study funding sources; and, (3) A request to consider alternative data collection modes that may be less burdensome to visitors such as internet administration or mail-back postcards.

NPS response on November 8, 2016: Further refinement and testing of survey materials is necessary because previous focus group results, and an expert peer review, indicated that fundamental aspects of the valuation scenario and questionnaire were not functioning properly. No new noise measurement efforts will be conducted in conjunction with this study. Rather, existing recordings will be utilized to test respondent sensitivity to noise, and elicit a value for reducing or eliminating noises. To ensure that these audio recordings are properly and consistently administered to visitors in the full survey, it will be necessary to intercept them in the park units. NPS will take whatever measures are feasible to minimize respondent burden in the full survey.

We again invite comments concerning this information collection on:

- Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful;
- The accuracy of the agency's estimate of the burden of the proposed collection of information;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

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 us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 16, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–28017 Filed 11–21–16; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Final Programmatic Environmental Impact Statement for the 2017–2022 Outer Continental Shelf (OCS) Oil and Gas Leasing Program

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability.

SUMMARY: BOEM announces the availability of the Final 2017–2022 OCS Oil and Gas Leasing Program Programmatic Environmental Impact Statement (Programmatic EIS) to inform the 2017–2022 Proposed Final Program. The Final Programmatic EIS provides a discussion of potential impacts of the proposed action, provides an analysis of reasonable alternatives to the proposed action, and recognizes BOEM's preferred alternative. Under Council on Environmental Quality (CEQ) regulations at 40 CFR 1506.10(b)(2), the Secretary of the Interior will not finalize the 2017–2022 OCS Oil and Gas Leasing Program until at least 30 days after publication of the Final Programmatic EIS.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski, Ph.D., Bureau of Ocean Energy Management, 45600 Woodland Road VAM–OEP, Sterling, VA 20166. Dr. Lewandowski may also be reached by telephone at (703) 787–1703.

SUPPLEMENTARY INFORMATION: A Draft Programmatic EIS was published on March 18, 2016, with a 45-day public comment period that ended on May 2, 2016. BOEM considered all comments submitted on the Draft Programmatic EIS during preparation of the Final Programmatic EIS. Persons interested in obtaining the Final Programmatic EIS, OCS EIS/EA BOEM 2016–060, can download it from *www.boemoceaninfo.com,* or may contact BOEM at the address and phone number provided above to request a paper copy or a CD–ROM version. Please specify if you wish a CD–ROM or paper copy. If neither is specified, a CD–ROM containing the Final Programmatic EIS will be provided. The Final Programmatic EIS will also be available at libraries in states adjacent to the proposed lease sales. These libraries are listed at *www.boemoceaninfo.com.*

Authority: This Notice of Availability of a Final Programmatic EIS is in compliance with the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 42 U.S.C. 4231 *et seq.*), and is published pursuant to 40 CFR 1506.6.

Dated: November 3, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–28249 Filed 11–21–16; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section

Notice of Availability of a Draft Environmental Assessment for Alamito and Terneros Sediment and Vegetation Removal Below Presidio Flood Control Project, Presidio, Texas

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of availability of the draft Environmental Assessment (EA).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the United States Section, Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the United States Section hereby gives notice that the Draft Environmental Assessment for Alamito and Terneros Sediment and Vegetation Removal below Presidio Flood Control Project, Presidio, Texas is available. An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within 30-days from the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Gilbert Anaya, Division Chief, Environmental Management Division; United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4702, email: *Gilbert.Anaya@ibwc.gov.*

Background: This Draft Environmental Assessment analyzes the potential impacts of removing accumulated sediment from Alamito and Terneros Creeks at their confluence with the Rio Grande and removal of vegetation along the United States side of the Rio Grande between Brito Creek and Terneros Creek in Presidio County, Texas.

Availability: The electronic version of the Draft EA is available from the USIBWC Web page: *www.ibwc.gov/Organization/Environmental/EIS_EA_Public_Comment.html.*

Dated: November 4, 2016.

Rebecca A. Rizzuti,

Assistant Legal Advisor.

[FR Doc. 2016–28053 Filed 11–21–16; 8:45 am]

BILLING CODE 7010–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1082–1083 (Second Review)]

Chlorinated Isocyanurates From China and Spain

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty orders on chlorinated isocyanurates from China and Spain would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on September 1, 2015 (80 FR 52789) and determined on December 7, 2015 that it would conduct full reviews (80 FR 79358, December 21, 2015).

Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on April 20, 2016 (81 FR 23328). The hearing was held in Washington, DC, on September 13, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on November 16, 2016. The views of the Commission are contained in USITC Publication 4646 (November 2016), entitled *Chlorinated Isocyanurates from China and Spain: Investigation Nos. 731–TA–1082–1083 (Second Review).*

By order of the Commission.

Issued: November 16, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–27990 Filed 11–21–16; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0239]

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 October 25 to November 7, 2016. The last biweekly notice was published on November 8, 2016.

DATES: Comments must be filed by December 22, 2016. A request for a hearing must be filed by January 23, 2017.

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–2016–0239. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, 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: Beverly Clayton, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3475, email: *Beverly.Clayton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0239, facility name, unit number(s), plant docket number, application date, and subject 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–2016–0239.
- *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.*
- *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–2016–0239, facility name, unit number(s), plant docket number, application date, and subject in 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 will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. 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 if 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. If the Commission takes 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. If the Commission makes 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 persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons 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's Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a petition is filed within 60 days, 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 petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition 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 petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the 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 petitioner's interest. The petition must also set forth the specific contentions which the 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 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 petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. 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 proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A 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 with respect to resolution of that person's admitted contentions consistent with the NRC's regulations, policies, and procedures.

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) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, 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.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1).

The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by January 23, 2017. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

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 (hereinafter ''petition''), 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, as amended at 77 FR 46562, August 3, 2012). 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 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 petition (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 available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/adjudicatory-sub.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 Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a petition. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.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 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 Electronic Filing 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 Electronic Filing Help Desk is available between 9 a.m. and 7 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 stating why there is good cause for not filing electronically and 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, 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, in some instances, a petition 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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

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.

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: July 25, 2016. A publicly-available version is in ADAMS under Accession No. ML16207A433.

Description of amendment request: The proposed amendment would eliminate Technical Specification (TS) Section 5.5.6, ''Inservice Testing and Inspection Program,'' as well as revise TS Section 5.5.4, ''Radioactive Effluent Controls Program,'' by clarifying that Surveillance Requirements (SRs) 3.0.2 and 3.0.3 are applicable to the radioactive effluents program. In addition, the amendment proposes adding a new definition for ''Inservice Testing Program'' (IST), to TS Section 1.1, ''Definitions.'' TS SRs that currently refer to the IST would be revised to refer to the new defined term, ''INSERVICE TESTING PROGRAM.'' The proposed changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler, TSTF–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR Usage Rule Application to TS Section 5.5 Testing.''

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 revises TS Chapter 5, ''Administrative Controls,'' Section 5.5, ''Programs and Manuals,'' by eliminating the ''Inservice Testing Program'' specification. Most requirements in the Inservice Testing Program are removed, as they are duplicative of requirements in the ASME OM [American Society of Mechanical Engineers Operation and Maintenance] Code, as clarified by Code Case OMN–20, ''Inservice Test Frequency.'' The remaining requirements in the Section 5.5 IST Program are eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, ''Inservice Testing Program,'' is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

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.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

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 eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change will eliminate the existing TS SR [surveillance requirement] 3.0.3 allowance to defer performance of missed inservice tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the TS provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or 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: Jon P. Christinidis, DTE Energy, Expert Attorney—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Branch Chief: David J. Wrona.

Duke Energy Progress, LLC, Docket No. 50–261, H.B. Robinson Steam Electric Plant (HBRSEP) Unit No. 2, Darlington County, South Carolina

Date of amendment request: September 14, 2016. A publicly-available version is in ADAMS under Accession No. ML16259A169.

Description of amendment request: The proposed amendment would adopt a revised alternative source term (AST) to support the transition from an 18-month to a 24-month fuel cycle. The amendment would also change applicable licensing basis documents.

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. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Revision of the AST does not affect the design or operation of HBRSEP, Unit No. 2. Rather, once the occurrence of an accident has been postulated, the new source term is an input to evaluate the consequences of the postulated accident. The revision of the AST has been evaluated. Based on the results of this analysis, it has been demonstrated that the dose consequences are within the regulatory [requirements and] guidance provided by the NRC. This [These regulatory requirements and] guidance is [are] presented in 10 CFR 50.67 and Regulatory Guide 1.183 [, respectively].

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not affect plant structures, systems, or components. The proposed change is a revision evaluation and does not initiate design basis accidents.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change is associated with a revision to the licensing basis for HBRSEP, Unit No. 2. The revised AST is in accordance with 10 CFR 50.67 and the associated Regulatory Guide 1.183. The analysis has been performed using conservative methodologies in accordance with regulatory guidance. The dose consequences are within the acceptance criteria found in the regulatory [requirements and] guidance associated with Alternative Source Terms.

The proposed change continues to ensure that doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits. Specifically, the margin of safety for the radiological consequences of these accidents is considered to be that provided by meeting the applicable regulatory limits.

Therefore, this 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: Kathryn B. Nolan, Associate General Counsel, Duke Energy Business Services, 550 South Tyron Street, Mail Code DEC45A, Charlotte, NC 28202.

Acting NRC Branch Chief: Jeanne A. Dion.

Entergy Operations, Inc. (Entergy), Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana

Date of amendment request: September 21, 2016. A publicly-available version is in ADAMS under Accession No. ML16245A359.

Description of amendment request: Entergy proposes to revise the Waterford 3 Technical Specifications (TS) to clarify the surveillance requirements for selected Engineered Safety Features Actuation System (ESFAS) Subgroup relays. Specifically, the license amendment would revise Table Notation for TS Table 4.3–2, ''Engineered Safety Features Actuation System Instrumentation Surveillance Requirements,'' to remove references to specific relays and to ensure the notation fully reflects the implementation of the Waterford 3 Surveillance Frequency Control Program (SFCP). The Waterford 3 SFCP was approved by letter dated July 26, 2016, via License Amendment No. 249 (ADAMS Accession No. ML16159A419).

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 with NRC staff's edits in [square brackets]:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will allow relays K105 and K306 to not be tested during power operation but shall be tested in accordance with the same frequency identified in the SFCP for the primary relays, which currently requires that they be tested at least once per 18 months and during each cold shutdown condition unless tested within the previous 62 days. The probability of an accident previously evaluated remains unchanged since the primary relays K114, K305, and K313 are currently tested in accordance with the SFCP (not tested during power operation but are tested at least once per 18 months and during each cold shutdown condition unless tested within the previous 62 days), K105 and K306 are currently not tested during power operation, and K105 and K306 will be tested in accordance with the SFCP (at least once per 18 months and during each cold shutdown condition unless tested within the previous 62 days). Not testing relays K105 and K306 during power operation and testing during cold shutdown cannot initiate an accident because the specific accidents which inadvertent ESFAS actuation is an initiator (Loss of External Load, Loss of Normal Feedwater Flow, Asymmetric Steam Generator Transient, and Loss of Component Cooling to the RCPs [Reactor Coolant Pumps]) are not possible during cold shutdown.

The proposed change to allow relays K105 and K306 to not be tested during power operation have been evaluated for impact on the accident analyses. The accident analyses remain within the regulatory acceptance criteria.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Moreover, testing of the modified relay scheme during power operation could result in inadvertent actuation and subsequent occurrence of an accident if either the permissive or primary relay has failed ''off,'' or actuated. Continued testing in accordance with the SFCP assures inadvertent actuation during testing resulting from a failed ''off'' relay will not result in an accident described in the UFSAR [Updated Final Safety Analysis Report].

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change allows relays K105 and K306 to be tested in accordance with the SFCP (not tested during power operation but shall be tested at least once per 18 months and during each cold shutdown condition unless tested within the previous 62 days). This surveillance frequency does not change the design function or operation of the ESFAS. There are no credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases that can be created by implementing the proposed change.

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 inclusion of relays K105 and K306 in the list of relays in the SFCP that are not tested during power operation as proposed in this TS 3/4.3.2 amendment request has been determined to not exceed or alter a design basis or safety limit and therefore has no significant impact on the accident analyses described in the UFSAR, therefore this change does not involve a significant reduction in the existing margins of safety for the fuel, the fuel cladding, the reactor coolant system boundary, or the containment building.

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: William B. Glew, Jr., Associate General Counsel—Entergy Services, Inc., 440 Hamilton Avenue, White Plains, New York 10601.

Acting NRC Branch Chief: Stephen S. Koenick.

Exelon Generation Company, LLC (Exelon), Docket No. 50–219, Oyster Creek Nuclear Generating Station (OCNGS), Ocean County, New Jersey

Date of amendment request: May 17, 2016, as supplemented by letter dated November 2, 2016. Publicly-available versions are available in ADAMS under Accession Nos. ML16138A129 and ML16308A029, respectively.

Description of amendment request: The licensee has provided a formal notification to the NRC, in a letter dated January 7, 2011 (ADAMS Accession No. ML110070507), of the intention to permanently cease power operations of OCNGS no later than December 31, 2019. Once certifications for permanent cessation of operations and permanent removal of fuel from the reactor are submitted to the NRC, certain staffing and training Technical Specifications (TSs) administrative controls will no longer be applicable or appropriate for the permanently defueled condition. Therefore, Exelon is requesting approval of changes to the staffing and training requirements in Section 6.0, ''Administrative Controls''; editorial and administrative changes to Section 6.0, and add additional definitions to TS Section 1.1, ''Definitions,'' of the OCNGS TSs. The proposed changes include additions to, deletions from, and conforming administrative changes to the OCNGS TSs. The proposed amendment would not be effective until the certification of permanent cessation of operation and certification of permanent removal of fuel from the reactor vessel are submitted to the NRC.

The license amendment request was originally noticed in the **Federal Register** on July 19, 2016 (81 FR 46963). The notice is being reissued in its entirety to include the revised scope and description of the amendment request.

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 changes would not take effect until OCNGS has permanently ceased operation and entered a permanently defueled condition. The proposed changes would revise the OCNGS TS by deleting or modifying certain portions of the TS administrative controls described in Section 6.0 of the TS that are no longer applicable to a permanently shutdown and defueled facility.

The proposed changes do not involve any physical changes to plant Structures, Systems, and Components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not involve a change to any safety limits, limiting safety system settings, limiting control settings, limiting conditions for operation, surveillance requirements, or design features.

The deletion and modification of provisions of the administrative controls do not directly affect the design of SSCs necessary for safe storage of spent irradiated fuel or the methods used for handling and storage of such fuel in the Spent Fuel Pool (SFP). The proposed changes are administrative in nature and do not affect any accidents applicable to the safe management of spent irradiated fuel or the permanently shutdown and defueled condition of the reactor.

In a permanently defueled condition, the only credible accidents are the Fuel Handling Accident (FHA), Radioactive Liquid Waste System Leak, and Postulated Radioactive Releases Due to Liquid Tank Failures. Other accidents such as Loss of Coolant Accident, Loss of Feedwater, and Reactivity and Power Distribution Anomalies will no longer be applicable to a permanently defueled reactor plant.

The probability of occurrence of previously evaluated accidents is not increased, since extended operation in a permanently defueled condition will be the only operation allowed, and therefore, bounded by the existing analyses. Additionally, the occurrence of postulated accidents associated with reactor operation is no longer credible in a permanently defueled reactor. This significantly reduces the scope of applicable accidents.

Therefore, the proposed changes do not involve a significant increase in the probability or consequence 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 changes to delete and/or modify certain TS administrative controls have no impact on facility SSCs affecting the safe storage of spent irradiated fuel, or on the methods of operation of such SSCs, or on the handling and storage of spent irradiated fuel itself. The proposed changes do not result in different or more adverse failure modes or accidents than previously evaluated because the reactor will be permanently shut down and defueled and OCNGS will no longer be authorized to operate the reactor.

The proposed changes do not affect systems credited in the accident analysis for the FHA, Radioactive Liquid Waste System Leak, and Postulated Radioactive Releases Due to Liquid Tank Failures at OCNGS. The proposed changes will continue to require proper control and monitoring of safety significant parameters and activities.

The proposed changes do not result in any new mechanisms that could initiate damage to the remaining relevant safety barriers in support of maintaining the plant in a permanently shutdown and defueled condition (*e.g.,* fuel cladding and SFP cooling). Since extended operation in a defueled condition will be the only operation 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 changes do not alter the protection system design, create new failure modes, or change any modes of operation. The proposed changes do not involve a physical alteration of the plant, and no new or different kind of equipment will be installed. Consequently, there are no new initiators that could result in a new or different kind of accident.

Therefore, the proposed changes do 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 changes involve deleting and/or modifying certain TS administrative controls once the OCNGS facility has been permanently shutdown and defueled. As specified in 10 CFR 50.82(a)(2), the 10 CFR 50 license for OCNGS will no longer authorize operation of the reactor or emplacement or retention of fuel into the reactor vessel following submittal of the certifications required by 10 CFR 50.82(a)(1). As a result, the occurrence of certain design basis postulated accidents are no longer considered credible when the reactor is permanently defueled.

The only remaining credible accident is a fuel handling accident (FHA). The proposed changes do not adversely affect the inputs or assumptions of any of the design basis analyses that impact the FHA.

The proposed changes are limited to those portions of the TS administrative controls

that are related to the safe storage and maintenance of spent irradiated fuel. The requirements that are proposed to be revised and/or deleted from the OCNGS TS are not credited in the existing accident analysis for the remaining applicable postulated accident (*i.e.,* FHA); therefore, they do not contribute to the margin of safety associated with the accident analysis. Certain postulated DBAs [design-basis accidents] involving the reactor are no longer possible because the reactor will be permanently shut down and defueled and OCNGS will no longer be authorized to operate the reactor.

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: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

Acting NRC Branch Chief: Douglas A. Broaddus.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center (DAEC), Linn County, Iowa

Date of amendment request: September 13, 2016. A publicly-available version is in ADAMS under Accession No. ML16263A071.

Description of amendment request: The proposed amendment would revise the DAEC Emergency Plan to increase staff augmentation times for Emergency Response Organization response functions.

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 increase in staff augmentation times has no effect on normal plant operation or on any accident initiator or precursors and does not impact the function of plant structures, systems, or components (SCCs). The proposed change does not alter or prevent the ability of the

Emergency Response Organization to perform their intended functions to mitigate the consequences of an accident or event. The ability of the emergency response organization to respond adequately to radiological emergencies has been demonstrated as acceptable through a staffing analysis as required by 10 CFR 50 Appendix E.IV.A.9.

Therefore, the proposed Emergency Plan changes do 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.

The proposed change does not impact the accident analysis. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed), a change in the method of plant operation, or new operator actions. The proposed change does not introduce failure modes that could result in a new accident, and the change does not alter assumptions made in the safety analysis. This proposed change increases the staff augmentation response times in the Emergency Plan, which are demonstrated as acceptable through a staffing analysis as required by 10 CFR 50 Appendix E.IV.A.9. The proposed change does not alter or prevent the ability of the Emergency Response Organization to perform their intended functions to mitigate the consequences of an accident or event.

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 change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in 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 is associated with the Emergency Plan staffing and does not impact operation of the plant or its response to transients or accidents. The change does not affect the Technical Specifications. The proposed change does not involve a change in the method of plant operation, and no accident analyses will be affected by the proposed change. Safety analysis acceptance criteria are not affected by this proposed change. The revised Emergency Plan will continue to provide the necessary response staff with the proposed change. A staffing analysis and a functional analysis were performed for the proposed change on the timeliness of performing major tasks for the functional areas of Emergency Plan. The analysis concluded that an extension in staff augmentation times would not significantly affect the ability to perform the required Emergency Plan tasks. Therefore, the proposed change is determined to not adversely affect the ability to meet 10 CFR 50.54(q)(2), the requirements of 10 CFR 50 Appendix E, and the emergency planning standards as described in 10 CFR 50.47 (b).

Therefore, the proposed change does 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: William Blair, P.O. Box 14000 Juno Beach, FL 33408–0420.

NRC Branch Chief: David J. Wrona.

PSEG Nuclear LLC, Docket Nos. 50–354, 50–272, and 50–311, Hope Creek Generating Station (Hope Creek) and Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), Salem County, New Jersey

Date of amendment request: October 17, 2016. A publicly-available version is in ADAMS under Accession No. ML16291A318.

Description of amendment request: The amendments would revise the technical specifications (TSs) by removing certain training program requirements. Specifically, the amendments would remove TS requirements that are redundant to or superseded by the requirements contained in 10 CFR part 55 and 10 CFR 50.120.

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 is an administrative change to remove the plant staff retraining and replacement training program requirements from the TS. The proposed change does not directly impact accidents previously evaluated. The Salem and Hope Creek licensed operator training programs have been accredited by the Institute of Nuclear Power Operations (INPO) and are based on a systems approach to training. The proposed TS changes take credit for the INPO accreditation of the licensed operator training programs and require continued compliance with the requirements of 10 CFR 55. The TS requirements for all other unit staff qualifications remain unchanged.

The training program for appropriate unit staff personnel other than licensed operators is addressed by 10 CFR 50.120. With the 10 CFR 50.120 rule, the NRC is emphasizing the need to ensure that industry personnel training programs are based upon job performance requirements. Personnel who are subjected to training based on job performance requirements should be able to perform their jobs more efficiently and with fewer errors. This is accomplished using the systems approach to training implemented by INPO accredited training programs for selected nuclear personnel. Included within

the rule is the requirement that the training program must reflect industry experience.

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 TS changes are administrative changes to clarify the current requirements for training programs and conform to 10 CFR 55 and 10 CFR 50.120.

The Salem and Hope Creek training programs for licensed operators and for non-licensed in the nine categories of personnel listed in 10 CFR 50.120 have been accredited by INPO and are based on a systems approach to training. The proposed TS changes take credit for the INPO accreditation of training programs and require continued compliance with the requirements of 10 CFR 55 and 10 CFR 120. The TS requirements for unit staff qualifications remain unchanged.

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 amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are administrative in nature and do not affect the plant design, hardware, system operation, or operating procedures. The change does not exceed or alter a design basis or safety limit and thus does 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: Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

Acting NRC Branch Chief: Stephen S. Koenick.

South Carolina Electric & Gas Company, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station, Units 2 and 3, Fairfield, South Carolina

Date of amendment request: October 24, 2016. A publicly-available version is in ADAMS under Accession No. ML16298A385.

Description of amendment request: The amendment request proposes changes to update the Protection and Safety Monitoring System (PMS) design, specifically the description of the roles of the Qualified Data Processing System (QDPS) and the safety displays. The proposed changes add Main Control Room (MCR) safety-related display divisions A and D to plant-specific Tier 1 (and associated Combined License (COL) Appendix C) and the Updated Final Safety Analysis Report (UFSAR), and correct the name of the QDPS in the UFSAR by referring to the QDPS as a system, rather than a subsystem. Because, this proposed change requires a departure from Tier 1 information in the Westinghouse Electric Company's AP1000 Design Control Document (DCD), the licensee also requested an exemption from the requirements of the Generic DCD Tier 1 in accordance with 10 CFR 52.63(b)(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. 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 roles of the qualified data processing system (QDPS) and safety-related displays, as well as the change to add Division A and Division D of the main control room (MCR) safety-related displays to the listing of PMS equipment, as identified in Combined License (COL) Appendix C (and plant-specific Tier 1) Table 2.5.2–1 and Updated Final Safety Analysis Report (UFSAR) Table 3.11–1 and 3l.6–2 do not alter any accident initiating component/system failure or event, thus the probabilities of the accidents previously evaluated are not affected.

The proposed changes do not adversely affect safety-related equipment or a radioactive material barrier, and this activity dos not involve the containment of radioactive material.

The radioactive material source terms and release paths used in the safety analysis are unchanged, thus the radiological releases in the UFSAR accident analysis are not affected.

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 change to the roles of the QDPS and safety-related displays, as well as the change to add Division A and Division D of the MCR safety-related displays to the listing of PMS equipment, as identified in COL Appendix C (and plant-specific Tier 1) Table 2.5.2–1 and UFSAR Table 3.11–1 and 3l.6–2 does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not alter the design or capability of any sensors which provide input to the QDPS. The functionality of the QDPS to process the input obtained from sensors into data to be sent to the safety displays is not affected by the proposed changes. The proposed changes do not affect any functions performed by the safety displays, nor do the proposed changes affect the capability of the safety displays to display the data received from the QDPS.

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.

There is no safety-related structure, system or component (SSC) or function adversely affected by the proposed change to the roles of the QDPS and safety-related displays, nor by the change to add Division A and Division D of the MCR safety-related displays to the listing of Protection and Safety Monitoring System (PMS) equipment. The proposed changes do not alter the mechanisms by which system components are actuated or controlled. Because no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, no margin of safety is reduced.

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 request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius, LLC, 1111 Pennsylvania NW., Washington, DC 20004–2514.

NRC Branch Chief: Jennifer Dixon-Herrity.

Tennessee Valley Authority, Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant (WBN), Units 1 and 2, Rhea County, Tennessee

Date of amendment request: March 29, 2016. A publicly-available version is in ADAMS under Accession No. ML16089A452.

Description of amendment request: The amendments would revise the WBN, Units 1 and 2, Technical Specification (TS) requirements for inoperable dynamic restraints (snubbers) by adding Limiting Condition for Operation (LCO) 3.0.8. The change is consistent with the NRC-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–372, ''Addition of LCO 3.0.8, Inoperability of Snubbers.''

The proposed amendment for WBN, Unit 1, would also make an

administrative change to add a reference to LCO 3.0.7 in LCO 3.0.1, consistent with TSTF–6, Revision 1, ''Add Exception for LCO 3.0.7 to LCO 3.0.1.''

The NRC staff issued a notice of availability of a model safety evaluation and model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on May 4, 2005 (70 FR 23252). The licensee affirmed the applicability of the model NSHC determination in its application dated March 29, 2016.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Changes Do Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on allowance provided by proposed LCO 3.0.8 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.8. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns.

The proposed administrative change for WBN, Unit 1, does not affect the structures, systems, or components (SSCs) of the plant, affect plant operations, or any design function or an analysis that verifies the capability of an SSC to perform a design function. No change is being made to any of the previously evaluated accidents in the WBN Unit 1 Updated Final Safety Analysis Report.

Therefore these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Changes Do Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to inoperable snubbers, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns.

The proposed administrative change for WBN, Unit 1, does not introduce any new accident causal mechanisms, since no physical changes are being made to the plant, nor do they impact any plant systems that are potential accident initiators.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Changes Do Not Involve a Significant Reduction in the Margin of Safety.

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three tiered approach recommended in NRC Regulatory Guide 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.8 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant.

The proposed administrative change for WBN, Unit 1, will have no effect on the availability, operability, or performance of safety-related systems and components. The proposed change will not adversely affect the operation of plant equipment or the function of equipment assumed in the accident analysis. The proposed change does not involve changes to any safety analyses assumptions, safety limits, or limiting safety system settings. The change does not adversely affect plant-operating margins or the reliability of equipment credited in the safety analyses.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Sherry A. Quirk, Executive Vice President and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Dr., 6A West Tower, Knoxville, TN 37902.

Acting NRC Branch Chief: Jeanne A. Dion.

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.

Energy Northwest, Docket No. 50–397, Columbia Generating Station (CGS), Benton County, Washington

Date of application for amendment: March 17, 2015, as supplemented by letters dated September 17, October 29,

November 17, and December 28, 2015; and April 7, May 11, and June 22, 2016.

Brief description of amendment: The amendment modified the CGS Technical Specifications by relocating specific surveillance frequencies to a licensee-controlled program consistent with NRC-approved Technical Specifications Task Force Traveler (TSTF)-425, Revision 3, ''Relocate Surveillance Frequencies to Licensee Control—RITSTF [Risk-Informed Technical Specifications Task Force] Initiative 5b,'' dated March 18, 2009. The availability of this TS improvement program was announced in the **Federal Register** on July 6, 2009 (74 FR 31996). The licensee has proposed certain plant-specific variations and deviations from TSTF–425, Revision 3, as described in its application dated March 17, 2015.

Date of issuance: November 3, 2016.

Effective date: As of its date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment No.: 238. A publicly-available version is in ADAMS under Accession No. ML16253A025; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* May 26, 2015 (80 FR 30100). The supplemental letters dated September 17, October 29, November 17, and December 28, 2015; and April 7, May 11, and June 22, 2016, 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 November 3, 2016.

No significant hazards consideration comments received: No.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (RBS), West Feliciana Parish, Louisiana

Date of amendment request: October 29, 2015, as supplemented by letters dated April 19 and July 27, 2016.

Brief description of amendment: The amendment revises Technical Specification (TS) 5.5.13, ''Primary Containment Leakage Rate Testing Program,'' by incorporating Nuclear Energy Institute (NEI) topical report 94–01, Revision 3–A, as the implementation document for the RBS performance-based containment leakage rate testing program. Based on the guidance in NEI 94–01, Revision 3–A, the change allows the RBS Type A Test (Integrated Leak Rate Test, or ILRT) frequency to be extended from 120 to 180 months, and the Type C Tests (Local Leak Rate Tests, or LLRTs) frequency to be extended from 60 to 75 months. Additionally, the amendment modifies Surveillance Requirement (SR) 3.6.5.1.3 to extend the frequency of the Drywell Bypass Test from 120 to 180 months and revises its allowed extension per SR 3.0.2 from 12 to 9 months.

Date of issuance: October 27, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 191. A publicly-available version is in ADAMS under Accession No. ML16287A599; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and TSs.

*Date of initial notice in **Federal Register**:* April 12, 2016 (81 FR 21597). The supplements dated April 19 and July 27, 2016, 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 27, 2016.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment request: August 22, 2016, as supplemented by letter dated September 8, 2016.

Brief description of amendment: This amendment replaces existing license condition 2.C.(4) with a new license condition that states that Technical Specification (TS) Surveillance Requirement (SR) 3.1.4.3 is not required for control rod drive 13 (CRD–13) during cycle 25 until the next entry into Mode 3. In addition, the license condition states that CRD–13 seal leakage shall be repaired prior to entering Mode 2 following the next Mode 3 entry, and that the reactor shall be shut down if CRD–13 seal leakage exceeds 2 gallons per minute. The amendment also replaces an obsolete note in TS SR 3.1.4.3 with a note to clarify that TS SR 3.1.4.3 is not required to be performed or met for CRD–13 during cycle 25 provided CRD–13 is administratively declared immovable, but trippable, and Condition D is entered for CRD–13.

Date of issuance: October 28, 2016.

Effective date: As of the date of issuance and shall be implemented within 15 days.

Amendment No.: 260. A publicly-available version is in ADAMS under Accession No. ML16281A498; 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 and Technical Specifications.

*Date of initial notice in **Federal Register**:* September 27, 2016 (81 FR 66306).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 2016.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station (Pilgrim), Plymouth County, Massachusetts

Date of amendment request: January 14, 2016.

Brief description of amendment: This amendment reduced the level of Pilgrim's Emergency Response Organization staff training for the on-shift Chemistry Technician to support on-shift Radiation Protection Technician functions at the onset of a radiological event. The amendment also revised paragraph 3.B of the Renewed Facility Operating License.

Date of issuance: October 28, 2016.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 245. A publicly-available version is in ADAMS under Accession No. ML16250A223; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–35: The amendment revised the Renewed Facility Operating License.

*Date of initial notice in **Federal Register**:* April 12, 2016 (81 FR 21597).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 2016.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant (CNP), Units 1 and 2, Berrien County, Michigan

Date of amendment request: March 14, 2016, as supplemented by letter dated October 28, 2016.

Brief description of amendments: The amendments revised the full implementation date (Milestone 8) of CNP, Units 1 and 2, Cyber Security Plan, and revised the associated license conditions for the renewed facility operating licenses.

Date of issuance: November 2, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 333 for Unit 1 and 315 for Unit 2. A publicly-available version is in ADAMS under Accession No. ML16077A029; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Renewed Facility Operating Licenses.

*Date of initial notice in **Federal Register**:* June 7, 2016 (81 FR 36605). The supplemental letter dated October 28, 2016, 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 November 2, 2016.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 11, 2015, as supplemented by letters dated November 5, 2015; March 31, 2016; August 12, 2016; and August 30, 2016.

Brief description of amendments: The amendments revised the Technical Specifications to support planned plant modifications to implement chiller replacements, for performing maintenance, and for unplanned operational issues.

Date of issuance: November 2, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 316 (Unit 1) and 297 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML16279A405; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Renewed Facility Operating Licenses and the Technical Specifications.

*Date of initial notice in **Federal Register**:* January 5, 2016 (81 FR 263). The supplemental letters dated March 31, 2016; August 12, 2016; and August 30, 2016, 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 November 2, 2016.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: April 7, 2016.

Brief description of amendment: The amendment approved a change to the Technical Specification (TS) emergency feedwater (EFW) system pump performance testing requirements in TS ¾.7.1.2, ''Emergency Feedwater System.'' In addition, the request also included an administrative change to remove an expired note in TS ¾.7.1.2 that temporarily extended the allowed outage time during testing and maintenance affecting the motor-driven EFW pump flow control valves.

Date of issuance: October 26, 2016.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 206. A publicly-available version is in ADAMS under Accession No. ML16264A411; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–12: Amendment revised the Renewed Facility Operating License and TSs.

*Date of initial notice in **Federal Register**:* June 7, 2016 (81 FR 36622).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 2016.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket No. 50–425, Vogtle Electric Generating Plant, Unit 2, Burke County, Georgia

Date of amendment request: August 12, 2016, as supplemented by letter dated September 15, 2016.

Brief description of amendment: The amendment modifies the Unit 2 Technical Specifications (TS) Limiting Condition for Operation (LCO) 3.7.9, ''Ultimate Heat Sink (UHS),'' to add a Note to extend the completion time of Condition D.2.2 of LCO 3.7.9 from 31 to 46 days to allow for refurbishing the 2B nuclear service cooling water (NSCW) transfer pump. This TS change would be a one-time change only for the 2B NSCW transfer pump during operating Cycle 19.

Date of issuance: October 31, 2016.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 164. A publicly-available version is in ADAMS under Accession No. ML16265A162; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–81: Amendment revised the Renewed Facility Operating License and TSs.

*Date of initial notice in **Federal Register**:* August 30, 2016 (81 FR 59666). The supplemental letter dated September 15, 2016, 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 (NSHC) determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment and NSHC determination are contained in a Safety Evaluation dated October 31, 2016.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 10th day of November 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–28085 Filed 11–21–16; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collections for OMB Review; Comment Request; Payment of Premiums; Termination Premium

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval of collection of information.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information for the termination premium under its regulation on Payment of Premiums (29 CFR part 4007) (OMB control number 1212–0064; expires February 28, 2017), without changes. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by January 23, 2017.

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.*
- *Mail or hand delivery:* Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to PBGC's Web site (*http://www.pbgc.gov*).

The currently approved collection of information (Form T and instructions) and PBGC's premium payment regulation may be accessed on PBGC's Web site at *http://www.pbgc.gov.* Copies of the proposed collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy (*murphy.deborah@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4400 ext. 3451. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400 ext. 3451.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 4006(a)(7) of ERISA provides for a ''termination premium'' (in addition to the flat-rate and variable-rate premiums under section 4006(a)(3) and (8) of ERISA) that is payable for three years following certain distress and involuntary plan terminations. PBGC's regulations on Premium Rates (29 CFR part 4006) and Payment of Premiums (29 CFR part 4007) implement the termination premium. Sections 4007.3 and 4007.13(b) of the premium payment regulation require the filing of termination premium information and payments with PBGC. PBGC has promulgated Form T and instructions for paying the termination premium.

In general, the termination premium applies where a single-employer plan terminates in a distress termination under ERISA section 4041(c) (unless contributing sponsors and controlled group members meet the bankruptcy liquidation requirements of ERISA section 4041(c)(2)(B)(i)) or in an involuntary termination under ERISA section 4042, and the termination date under section 4048 of ERISA is after 2005. The termination premium does not apply in certain cases where termination occurs during a bankruptcy proceeding filed before October 18, 2005.

The termination premium is payable for three years. The same amount is payable each year. The amount of each payment is based on the number of participants in the plan as of the day before the termination date. In general, the amount of each payment is equal to $1,250 times the number of participants. However, the rate is increased from $1,250 to $2,500 in certain cases involving commercial airline or airline catering service plans. The termination premium is due on the 30th day of each of three consecutive 12-month periods. The first 12-month period generally begins shortly after the termination date or after the conclusion of bankruptcy proceedings in certain cases.

The termination premium and related information must be filed by a person liable for the termination premium. The persons liable for the termination premium are contributing sponsors and members of their controlled groups, determined on the day before the plan termination date. Interest on late termination premiums is charged at the rate imposed under section 6601(a) of the Internal Revenue Code, compounded daily, from the due date to the payment date. Penalties based on facts and circumstances may be assessed both for failure to timely pay the termination premium and for failure to timely file required related information and may be waived in appropriate circumstances. A penalty for late payment will not exceed the amount of termination premium paid late. Section 4007.10 of the premium payment regulation requires the retention of records supporting or validating the computation of premiums paid and requires that the records be made available to PBGC.

OMB has approved the termination premium collection of information (Form T and instructions) under control number 1212–0064 through February 28, 2017. PBGC intends to request that OMB extend approval of this collection of information for three years, without changes. 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 estimates that it will each year receive an average of about 1 filing for the first year a termination premium is due, 1 filing for the second year a termination premium is due, and 1 filing for the third year a termination premium is due, from a total of about 3 respondents. PBGC estimates that the total annual burden of the collection of information will be about 15 minutes and $200.

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, by:

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2016–27866 Filed 11–21–16; 8:45 am]

BILLING CODE 7709–02–P

OFFICE OF PERSONNEL MANAGEMENT

OMB No. 3206–0233, Civil Service Retirement System Survivor Annuitant Express Pay Application for Death Benefits, OPM Form RI 25–051

AGENCY: Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) OMB No. 3206–0233, Civil Service Retirement System Survivor Annuitant Express Pay Application for Death Benefits, OPM Form RI 25–051. As required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** (81 FR 47444, July 21, 2016) allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until December 22, 2016. 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 Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent by email to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: OPM Form RI 25–051 will be used by the Civil Service Retirement System solely to pay benefits to the widow(er) of an annuitant. This application is intended for use in immediately authorizing payments to an annuitant's widow or widower, based on the report of death, when our records show the decedent elected to provide benefits for the applicant. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Civil Service Retirement System Survivor Annuitant Express Pay Application for Death Benefits.

OMB: 3206–0233.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 34,800.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 17,400.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–28088 Filed 11–21–16; 8:45 am]

BILLING CODE 6325–38–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* November 22, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 15, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 12 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–21, CP2017–41.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–28019 Filed 11–21–16; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Notice of Closed Meeting; Sunshine Act

Notice is hereby given that the Railroad Retirement Board will hold a closed meeting on November 30, 2016 beginning at 10:00 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Closed meeting notice:

(1) General Counsel Position

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312–751–4920.

Dated: November 17, 2016.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2016–28176 Filed 11–18–16; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79323; File No. SR–ISEMercury-2016–20]

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Non-Controversial and Technical Changes to Exchange Rules

November 16, 2016.

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 November 3, 2016, ISE Mercury, LLC (''ISE Mercury'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make a number of non-controversial and technical changes to its rules as described in more detail below.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make a number of non-controversial changes and technical corrections to its rules. Specifically, these changes are all to correct typographical errors and delete obsolete rule text.[3] The changes are described in more detail below.

1. No Bid Options/Limit Price

Rule 713(b), which deals with priority of orders, provides that if the lowest offer for any options contract is $0.05 then no member shall enter a market order to sell that series, and any such market order shall be considered a limit order to sell at a price of $0.05. This provision is intended to prevent members from submitting market orders to sell in no bid series, which could execute at a price of $0.00, and to instead convert those orders to limit orders with a limit price equal to the minimum trading increment, *i.e.,* $0.05 for most option classes.[4] A ''no bid'' or ''zero bid'' series refers to an option where the bid price is $0.00. Series of options quoted no bid are usually deep out-of-the-money series that are perceived as having little if any chance of expiring in-the-money. For options that trade in regular nickel increments, a best offer of $0.05 corresponds to a best bid of $0.00, *i.e.* one minimum trading increment below the offer. However, option series may be no bid with other offer prices as well. For example, an option class would be considered no bid if it is quoted at $0.00 (bid)—$0.15 (offer). In order to avoid having these orders execute at a price of $0.00, the Exchange proposes to clarify that Rule 713(b) applies to all option classes that are quoted no bid, rather than just those option classes that have an offer of $0.05. Currently, options exchanges have in place a pilot (the ''Penny Pilot'') to quote and trade options in one cent increments, lowering the minimum trading increment from $0.05 in certain symbols. The Exchange therefore proposes to amend Rule 713(b) to clarify that the Exchange will put a limit price equal to the minimum trading increment on market orders to sell a no bid option series. For example, if the deep out-of-the-money SPY December $230.00 call, which is traded in penny increments, is quoted at $0.00 (bid)—$0.03 (offer), a market order to sell would instead be treated as a limit order to sell at a price of $0.01.

2. Non-Displayed Penny Orders and Quotes

The Exchange currently has rules in place that allow members to enter non-displayed orders and quotes in penny increments in designated options with a minimum trading increment greater than one cent (''non-displayed penny orders and quotes'').[5] A non-displayed penny order or quote is available for execution at its penny price but is displayed at the closest minimum trading increment that does not violate the limit price.[6] The Exchange does not offer non-displayed penny orders or quotes and therefore proposes to delete obsolete references to this order type from its rules. First, the Exchange proposes to delete Rule 715(b)(4), which defines non-displayed penny orders. Second, the Exchange proposes to delete language in Rule 804(b)(1) and Rule 805(a) that permits market makers to enter non-displayed penny quotes and orders, respectively. Third, the Exchange proposes to delete language in Supplementary Material .06 to Rule 716 concerning split prices for non-displayed penny orders and quotes entered into the Facilitation and Solicitation Mechanisms. Finally, the Exchange proposes to delete language in Supplementary Material .03 to Rule 717 concerning the execution of non-displayed penny orders that an Electronic Access Member represents as agent against principal orders and orders solicited from other broker dealers.

3. Customer Participation Orders

A customer participation order (''CPO'') is an order type that can be used by Public Customers[7] to participate in the Price Improvement Mechanism (''PIM'').[8] Upon entry of a Crossing Transaction into the PIM,[9] a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See also* Securities Exchange Act Release No. 73808 (December 10, 2014), 79 FR 74797 (December 16, 2014) (SR–ISE–2014–54) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Technical Corrections to the International Securities Exchange, LLC (''ISE'') Rules).

[4] Symbols not included in the Penny Pilot generally trade in $0.05 increments if the options contract is trading at less than $3.00 per option, and $0.10 increments if the options contract is trading at $3.00 per option or higher. *See* Rule 710.

[5] *See* Rule 715(b)(4), Rule 804(b)(1) and Rule 805(a).

[6] *See* Rule 715(b)(4) and Rule 804(b)(1).

[7] The term ''Public Customer'' means a person or entity that is not a broker or dealer in securities. See Rule 100(a)(38).

[8] The PIM is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent (a ''Crossing Transaction''). *See* Rule 723(a).

[9] A Crossing Transaction is comprised of the order the Electronic Access Member represents as agent (the ''Agency Order'') and a counter-side order for the full size of the Agency Order (the ''Counter-Side Order''). The Counter-Side Order may represent interest for the Member's own account, or interest the Member has solicited from

broadcast message is sent to all members, who then have 500 milliseconds to enter orders that indicate the size and price at which they want to participate in the execution (''Improvement Orders'').[10] The CPO is an instruction to the member to enter an Improvement Order on behalf of a Public Customer. Specifically, a CPO is a limit order on behalf of a Public Customer that, in addition to the limit order price in standard increments, includes a price stated in one cent increments at which the Public Customer wishes to participate in trades executed in the same options series in penny increments through the PIM.[11] The Exchange does not offer CPOs and therefore proposes to delete obsolete references to this order type from its rules. The Exchange first proposes to delete Rule 715(f), which defines CPOs. Furthermore, the Exchange proposes to remove two references to CPOs in other rules. Specifically, the Exchange proposes to remove references to CPOs in Supplementary Material .06 to Rule 723, which explains when Improvement Orders can be entered with respect to CPOs,[12] and in Rule 723(d), which notes that the agency side of an order entered into the Price Improvement Mechanism may execute against CPOs at the end of the exposure period.

4. Linkage Rules

The Exchange proposes to delete Supplementary Material .04 and .05 to Rule 803, which contains duplicative and obsolete provisions relevant to away market routing. In particular, the content of Supplementary Material .04 and .05 to Rule 803 is now contained in Supplementary Material .06 and .07 to Rule 1901[13] because linkage handling is performed by unaffiliated broker dealers (*i.e.,* Linkage Handlers) on the Exchange. Therefore as described above, the Exchange proposes to delete this language from Rule 803, which concerns the obligations of market makers.

5. Supplementary Material

The Exchange notes that certain supplementary material is mistakenly labelled as ''supplemental'' material in the Exchange's rulebook.[14] In order to achieve consistency with how other rules are labelled, the Exchange proposes to change these to instead refer to ''supplementary'' material. Finally, the Exchange proposes to make a non-substantive change to Supplementary Material to Rule 803, which concerns the obligations of market makers, by updating the word ''To'' to lower case.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] In particular, the proposal is consistent with Section 6(b)(5) of the Act [16] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes it is appropriate to make the proposed technical corrections to its rules so that Exchange members and investors have a clear and accurate understanding of the meaning of the ISE Mercury rules.

1. No Bid Options/Limit Price

The Exchange currently operates a pilot program to permit designated options classes to be quoted and traded in increments as low as one cent. The Exchange is proposing to amend Rule 713(b) to account for the fact that option classes selected for inclusion in the Penny Pilot are permitted to trade in penny increments. For penny classes that are quoted no bid, the Exchange will convert a market order to sell to a limit order with a price of one cent. In addition, the proposed rule change clarifies that Rule 713(b) applies to all series with a bid of $0.00, and not just those series that also have an offer of $0.05. The proposed rule change is necessary to account for options trading in multiple trading increments, including under the Penny Pilot, and will ensure that market orders to sell are not inadvertently executed at a price of zero. The Exchange believes that these changes more accurately reflect the intent of Rule 713(b), as described above, and will eliminate investor confusion with respect to the operation of this rule by more accurately describing the functionality provided by the Exchange.

2. Non-Displayed Penny Orders and Quotes/Customer Participation Orders

As explained above, the Exchange does not offer non-displayed penny orders and quotes or customer participation orders, and thus proposes to remove obsolete definitions and other outdated references to these order types. The Exchange believes that these changes will eliminate investor confusion regarding order types available for trading on ISE Mercury to the benefit of members and investors.

3. Linkage Rules

The proposed changes to the linkage rules are non-substantive and intended to reduce investor confusion. As explained above, the Exchange is deleting duplicative and obsolete rule text from Chapter 8 of its rulebook because linkage handling is handled by Linkage Handlers. Therefore, the Exchange believes that these rules are more appropriately located in Chapter 19 of the Exchange's rulebook, which incorporates by reference Chapter 19 of the ISE rulebook.

4. Supplementary Material

The proposed change to label supplementary material correctly is non-substantive and is intended to achieve consistency in how these rules are labelled to the benefit of members and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[17] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change makes technical, non-substantive amendments to the Exchange's rules in order to eliminate investor confusion, and is not designed to have any competitive impact.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or 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

one or more other parties, or a combination of both. *See* Rule 723(b).

[10] *See* Rule 723(c)(1).

[11] *See* Rule 715(f).

[12] Although CPOs are no longer available, members will continue to be able to enter Improvement Orders for the account of Public Customers.

[13] *See* Securities Exchange Act Release No. 73808 (December 10, 2014), 79 FR 74797 (December 16, 2014) (SR–ISE–2014–54) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Technical Corrections to the ISE Rules). Chapter 19 of the Exchange's rulebook incorporates Chapter 19 of the ISE rulebook by reference.

[14] *See* ''Supplemental'' Material to Rules 717 and 809. *See* also reference in Rule 721(a)(3) to ''Supplemental'' Material .01 to Rule 717.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(8).

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)(iii) of the Act [18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange requests that the Commission waive the 30-day operative delay. The Exchange asserts that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change makes non-substantive, technical changes to the Exchange's rules. The Exchange also believes that the proposed rule change increases the clarity of ISE Mercury rules to the benefit of members and investors that trade on the Exchange. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing. [21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 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.

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–ISEMercury–2016–20 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–ISEMercury-2016–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISEMercury–2016–20 and should be submitted on or before December 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Brent J. Fields,

Secretary.

[FR Doc. 2016–28031 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79322; File No. SR–Phlx–2016–97)

Self-Regulatory Organizations; NASDAQ PHLX LLC; Order Granting Approval of Proposed Rule Change To Delete Outdated or Unnecessary Rule Language in Phlx Rule 1020

November 16, 2016.

I. Introduction

On September 27, 2016, NASDAQ PHLX LLC (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''SEC'' or ''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 delete or amend its rules relating to specialists. The proposed rule change was published for comment in the **Federal Register** on October 14, 2016.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

Phlx Rule 1020 contains provisions relating to the registration and functions of options specialists.[4] Section (b) provides that a member registered as a specialist in one or more options has an obligation to assist in the maintenance of a fair and orderly market, ''in addition to the execution of orders entrusted to him in such options.'' The Exchange proposes to delete the language in section (b) regarding execution of entrusted orders. The Exchange represents that today, specialists on the Exchange trade only for their own account and ''no longer handle any agency orders whatsoever in their role as specialists.'' [5]

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79073 (October 11, 2016), 81 FR 71153 (October 14, 2016) (''Notice'').

[4] A ''specialist'' is an Exchange member who is registered as an options specialist pursuant to Phlx Rule 1020(a). Specialists are subject to quoting and registration obligations set forth in Phlx Rules 1014(b), 1020 and 1080.02.

[5] *See* Notice, *supra* note 3, at 71154.

Commentary .01 of Phlx Rule 1020 provides that in ''effecting transactions'' for a specialist's own account for the purpose of establishing or increasing a position, a specialist is to effect such transactions in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular option, and the adequacy of his position to the immediate and reasonably anticipated needs of the options market. Commentary .01 sections (a) through (d) provide that certain types of transactions to establish or increase a position are not to be effected except when they are reasonably necessary to render the specialist's position adequate to such needs.[6] The Exchange proposes to delete the last sentence of Commentary .01 and sections (a) through (d). The Exchange represents that today, specialists do not ''effect transactions'' in the sense of matching bids and offers to cause a transaction execution, except in rare cases.[7] Instead, specialists submit bids and offers to be matched by the PHLX XL trading system.[8] Therefore, the Exchange believes that the specialist may be unable to determine the price of the last sale, which would be required for a specialist to comply with the language Phlx proposes to be deleted.

Commentary .02 of Phlx Rule 1020 provides that, for transactions of a specialist for his own account that liquidate or decrease his position in an option in which he is registered, such transactions are to be ''effected'' in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular option, and the adequacy of the specialist's positions to the immediate and reasonably anticipated needs of the options market. Commentary .02 sections (a) through (c) describe certain restrictions on specialists when liquidating or decreasing such positions.[9] The Exchange proposes to delete part of the last sentence of Commentary .02 and sections (a) through (c). The Exchange represents that, as discussed above, a specialist may be unable to determine the ''last different price'' as required to comply with sections (a) and (c).[10] The Exchange believes also that section (b) is redundant to Rule 1020(b), which already contains the ''fair and orderly'' requirement.[11]

Commentary .03 of Phlx Rule 1020 provides that a specialist's quotation, made for his own account, should be such that a transaction effected at his quoted price or within the quoted spread, whether having the effect of reducing or increasing the specialist's position, would bear a proper relation to preceding transactions and anticipated succeeding transactions. The Exchange proposes to delete Commentary .03. The Exchange represents that, due to the speed of trading that occurs today on the Phlx XL trading system, specialists may not have knowledge of preceding transactions and would not be able to adjust quotes as needed to comply with Commentary .03 before the quotes are accessed.[12]

Commentary .04 of Phlx Rule 1020 provides that a specialist should avoid participating as a dealer in opening or reopening an option in such a manner as to reverse the balance of public supply and demand as reflected by market and limited price orders at or near the price of the previous close or halt, unless the condition of the general market or the specialist's position in light of the reasonably anticipated needs of the market make it advisable to do so, or unless the specialist has obtained the prior approval of an Options Exchange Official to do so. The commentary provides that he may, however, buy or sell an option as a dealer to minimize the disparity between supply and demand at an opening or reopening. The Exchange proposes to delete Commentary .04. The Exchange represents that a specialist no longer manually opens options classes; the PHLX XL trading system handles the opening and reopening of options.[13]

Commentary .05 of Phlx Rule 1020 prohibits a member acting as a specialist from effecting transactions for the purpose of adjusting a LIFO inventory in an option in which he is acting except as is reasonably necessary to assist in the maintenance of a fair and orderly market. The Exchange believes that Commentary .05 is no longer necessary and proposes to delete it.[14]

Commentary .06 of Phlx Rule 1020 restricts a specialist from assigning options in which he is registered to an investment account. The Commentary states that a specialist may not add to a position in an investment account unless reasonably necessary to permit the specialist to assist in the maintenance of a fair and orderly market. Furthermore, a specialist may not effect a transfer of options in which he is registered from his dealer account to an investment account if the transfer would result in a short position in the dealer account. The Commentary also provides that in the maintenance of price continuity with reasonable depth, it is commonly desirable for a specialist to supply options to the market, even though he may have to sell short to do so, to the extent reasonably necessary to meet the needs of the market. The Exchange proposes to delete Commentary .06 because investment accounts are no longer used by specialists.[15]

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.[16] In particular, the Commission finds that the proposed rule change is consistent with Section

[6] Specifically, Commentary .01 sections (a) through (d) provide that the following types of transactions to establish or increase a position are not to be effected except when they are reasonably necessary to render the specialist's position adequate to such needs: (a) A purchase at a price above the last sale in the same trading session; (b) the purchase of all or substantially all the options offered on the book at a price equal to the last sale, when the option so offered represents all or substantially all the options offered in the market; and when a substantial amount of an option is offered at a price equal to the last sale price, the purchase of more than 50% of all the options offered at the last sale price; (c) the supplying of all or substantially all the options bid for on the book at a price equal to the last sale, when the option so bid for represents all or substantially all the options bid for in the market; and when a substantial amount of the options bid for at a price equal to the last sale price, the supplying of more than 50% of all the options bid for at the last sale price; (d) failing to re-offer or re-bid where necessary after effecting transactions described in (a), (b), or (c). The rule permits transactions of these types to be effected, however, with the approval of an Options Exchange Official or in relatively inactive markets where they are an essential part of a proper course of dealings and where the amount of an option involved and the price change, if any, are normal in relation to the market.

[7] *See* Notice, *supra* note 3, at 71154. The Exchange represents that although a specialist may ''effect transactions'' with a market maker on the Exchange's trading floor, the vast majority of transactions are executed electronically by the trading system.

[8] *See id.*

[9] Commentary .02 sections (a) through (c) also provide that, unless he has the prior approval of an Options Exchange Official, he should avoid: (a) Liquidation of all or substantially all of a position by selling options at prices below the last different price or by purchasing options at prices above the last different price unless such transactions are reasonably necessary in relation to the specialist's overall position in the options in which he is registered; (b) failing to maintain a fair and orderly market during liquidations; or (c) failing to re-enter the market where necessary, after effecting transactions described in (a) above.

[10] *See* Notice, *supra* note 3, at 71155.

[11] *See id.*

[12] *See id.*

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] 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).

6(b)(5) of the Act,[17] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that the deletion of Phlx Rules 1020(b), Commentary .01, Commentary .02 (a) and (c), Commentary .03, Commentary .04, and Commentary .06 should protect investors by helping to ensure that the Phlx rules accurately describe the current operations of the Exchange and obligations of its members. In addition, the Commission notes that the deletion of Commentary .02 (b) to remove redundant rule language should add clarity to Phlx's rules and that the deletion of Commentary .05 and Commentary .06 should provide more clarity regarding the obligations of specialists on the Exchange.

Accordingly, for the reasons discussed above, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act.

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act[18] that the proposed rule change (SR–PHLX–2016–97) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Brent J. Fields,

Secretary.

[FR Doc. 2016–28030 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10257; 34–79336; File No. 265–28]

Investor Advisory Committee Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of Securities and Exchange Commission Dodd-Frank Investor Advisory Committee.

SUMMARY: The Securities and Exchange Commission Investor Advisory Committee, established pursuant to Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is providing notice that it will hold a public meeting. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Thursday, December 8, 2016 from 9:30 a.m. until 3:00 p.m. (ET). Written statements should be received on or before December 8, 2016.

ADDRESSES: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC 20549. The meeting will be webcast on the Commission's Web site at *www.sec.gov.* Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov.* Please include File No. 265–28 on the subject line; or

Paper Statements

- Send paper statements to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Marc Oorloff Sharma, Senior Special Counsel, Office of the Investor Advocate, at (202) 551–3302, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, except during that portion of the meeting reserved for an administrative work session during lunch. Persons needing special accommodations to take part because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT.**

The agenda for the meeting includes: remarks from Commissioners; a discussion regarding investor protection priorities for the New Year; the announcement of election results for open officer positions; an update on the Commission's response to the rulemaking mandate of the Fixing America's Surface Transportation Act concerning public company disclosure requirements; and a nonpublic administrative work session during lunch.

Dated: November 17, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–28077 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79328; File No. SR–NYSEMKT–2016–102]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Introducing NYSE OptX

November 16, 2016.

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 November 3, 2016, NYSE MKT LLC, on behalf of NYSE Amex Options (''NYSE Amex Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 15, 2016, the Exchange filed Amendment No. 1 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to introduce NYSE OptX, an order entry platform that would allow for the submission of Qualified Contingent Cross (''QCC'') Orders and orders executed in the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the Exchange proposed to amend note 10, *infra,* to clarify that QCC Orders sent through NYSE OptX to the Exchange for execution would comply with the order format and EOC entry requirements established by the Exchange, which are set forth in Rule 955NY.

Exchange's Customer Best Execution (''CUBE'') Auction by ATP Holders. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to introduce NYSE OptX, an order entry platform that would allow for the submission of QCC Orders and CUBE Orders (collectively, ''paired orders'') by ATP Holders.[5] ATP Holders currently send paired orders through the use of third party front end order management systems, such as PrecISE[6] or PULSe,[7] or by calling Floor Brokers and relaying their orders by telephone.

NYSE OptX is an order entry platform that utilizes a combination of Instant Messaging (IM) and browser-based technology to allow ATP Holders to submit paired orders for execution on the Exchange's trading system.[8] There are multiple steps required for ATP Holders to execute a paired order through NYSE OptX.[9] First, an ATP Holder would send a paired order in plain text to NYSE OptX.[10] NYSE OptX would be established by an ATP Holder as an IM contact that can be accessed through various instant messaging platforms. Next, upon receipt of the plain text message sent by an ATP Holder, NYSE OptX would translate the message into a pre-populated order ticket with details of the order and return the order ticket to the ATP Holder in a browser-based URL. When the ATP Holder opens the URL, the pre-populated order ticket would appear with the order information as entered by the ATP Holder. The ATP Holder would then confirm the order ticket and submit the order to the Exchange for execution, or send the order to a Floor Broker for execution. If an ATP Holder sends the order to a Floor Broker, the Floor Broker would verify the order and send it through NYSE OptX for execution on the Exchange's trading system much like how the Floor Broker would normally execute the order but without having to re-key the order into the Floor Broker's terminal. After an order is executed on the Exchange,[11] NYSE OptX would remit details of the execution back to the ATP Holder.

NYSE OptX is designed as an alternative to the front end order management systems, such as PrecISE and PULSe, and as an alternative to the use of telephones for the sending by ATP Holders of paired orders to the Exchange. NYSE OptX would not provide ATP Holders with the capability to send any other type of orders or the capability to send paired orders for execution to other options markets. At this time, ATP Holders would only be able to use NYSE OptX for the transmission of paired orders. Use of NYSE OptX by ATP Holders would be voluntary and ATP Holders would continue to be able to submit paired orders through the use of a third party front end order management system, or by telephone, as they do today.

While PrecISE and PULSe require software to be installed on a desktop computer, NYSE OptX does not require installation of any software as it relies on existing instant messaging technology which would make its use by ATP Holders seamless. ATP Holders would also not need a physical workstation to use NYSE OptX.

The Exchange notes that the use of NYSE OptX to send paired orders is optional. The Exchange is offering NYSE OptX as a convenience to ATP Holders and NYSE OptX would not be the exclusive means available to ATP Holders to execute paired orders on the Exchange. The Exchange will announce the effective date of NYSE OptX in a Trader Update to be published no later than 90 days following Commission approval. The effective date will be no later than 270 days following publication of that Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[12] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering NYSE OptX as an alternate means to submit paired orders for execution on the Exchange would generally allow the Exchange to better compete for such orders and thus enhance competition. The Exchange believes that the proposed rule change is reasonable as it could encourage ATP Holders to direct a greater number of paired orders to the Exchange instead of sending such orders to a competing exchange.

The Exchange further believes that the proposed rule change would allow the Exchange of [sic] offer a new service on an equitable and non-discriminatory basis. Specifically, the Exchange believes that use of NYSE OptX is equitable as it is voluntary and not required for ATP Holders to execute paired orders on the Exchange.

[5] The term ''ATP Holder'' refers to a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP. An ATP Holder must be a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934. *See* Rule 900.2NY.(5).

[6] PrecISE Trade® is a front-end order and execution management system for trading options and stock-option combinations. *See https://www.ise.com/options/precise/.*

[7] PULSe℠ is a front end execution management system that allows users to send orders to CBOE, C2 and to other U.S. options and stock exchanges. *See https://www.cboe.org/hybrid/pulsesalessheet.pdf.*

[8] The Exchange represents that NYSE OptX is merely an instant messaging platform to link ATP Holders with the Exchange's trading system (*i.e.,* it is a new means of sending paired orders to the Exchange's existing trading system), and does not require any changes to the Exchange's communication or surveillance rules.

[9] ATP Holders would be required to log into NYSE OptX each trading day, similar to how they would log into any other front end order management system.

[10] ATP Holders would be required to provide all the essential information regarding paired orders when sending it to NYSE OptX, including the price of the option and the stock, the size and side of the order, *i.e.,* buy or sell, and delta. The Exchange represents that QCC Orders sent to the Exchange for execution would comply with the order format and EOC entry requirements established by the Exchange. *See* Rule 955NY—Order Format and System Entry Requirements. *See also* Amendment No. 1, *supra* note 4.

[11] All executions would be subject to the Exchange's standard transaction fees and credits applicable to QCC Orders and CUBE Orders.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

Additionally, as proposed, the Exchange would provide NYSE OptX to ATP Holders on a non-discriminatory basis in that NYSE OptX would be available to all ATP Holders in a 'one-size fits all' offering in which all ATP Holders would be subject to the same terms and conditions and would receive the same level of service.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change evidences the strength of competition in the options industry. Specifically, the Exchange believes the proposed rule change will enhance the competitiveness of the Exchange relative to other options exchanges that transact in paired orders.

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 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, as modified by Amendment No. 1, 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–NYSEMKT–2016–102 *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–NYSEMKT–2016–102. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–102 and should be submitted on or before December 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2016–28035 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78f(b)(8).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79327; File No. SR–NYSEArca–2016–143]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Introducing NYSE OptX

November 16, 2016.

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 November 3, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 15, 2016, the Exchange filed Amendment No. 1 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to introduce NYSE OptX, an order entry platform that would allow for the submission of Qualified Contingent Cross orders (''QCC Orders'') by OTP Holders and OTP Firms. 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,

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the Exchange proposed to amend note 11, *infra,* to clarify that QCC Orders sent through NYSE OptX to the Exchange for execution would comply with the order format and EOC entry requirements established by the Exchange, which are set forth in Rule 6.67.

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to introduce NYSE OptX, an order entry platform that would allow for the submission of QCC Orders by OTP Holders [5] and OTP Firms [6] (collectively, ''OTPs''). OTPs currently send QCC Orders through the use of third party front end order management systems, such as PrecISE [7] or PULSe,[8] or by calling Floor Brokers and relaying their orders by telephone.

NYSE OptX is an order entry platform that utilizes a combination of Instant Messaging (IM) and browser-based technology to allow OTPs to submit QCC Orders for execution on the Exchange's trading system.[9] There are multiple steps required for OTPs to execute their QCC Orders through NYSE OptX.[10] First, an OTP would send a QCC Order in plain text to NYSE OptX.[11] NYSE OptX would be established by an OTP as an IM contact that can be accessed through various instant messaging platforms. Next, upon receipt of the plain text message sent by an OTP, NYSE OptX would translate the message into a pre-populated order ticket with details of the order and return the order ticket to the OTP in a browser-based URL. When the OTP opens the URL, the pre-populated order ticket would appear with the order information as entered by the OTP. The OTP would then confirm the order ticket and submit the order to the Exchange for execution, or send the order to a Floor Broker for execution. If an OTP sends the order to a Floor Broker, the Floor Broker would verify the order and send it through NYSE OptX for execution on the Exchange's trading system much like how the Floor Broker would normally execute the order but without having to re-key the order into the Floor Broker's terminal. After an order is executed on the Exchange,[12] NYSE OptX would remit details of the execution back to the OTP.

NYSE OptX is designed as an alternative to the front end order management systems, such as PrecISE and PULSe, and as an alternative to the use of telephones for the sending by OTPs of QCC Orders to the Exchange. NYSE OptX would not provide OTPs with the capability to send any other type of orders or the capability to send QCC Orders for execution to other options markets. At this time, OTPs would only be able to use NYSE OptX for the transmission of QCC Orders. Use of NYSE OptX by OTPs would be voluntary and OTPs would continue to be able to submit QCC Orders through the use of a third party front end order management system, or by telephone, as they do today.

While PrecISE and PULSe require software to be installed on a desktop computer, NYSE OptX does not require installation of any software as it relies on existing instant messaging technology which would make its use by OTPs seamless. OTPs would also not need a physical workstation to use NYSE OptX.

The Exchange notes that the use of NYSE OptX to send QCC Orders is optional. The Exchange is offering NYSE OptX as a convenience to OTPs and NYSE OptX would not be the exclusive means available to OTPs to execute QCC Orders on the Exchange. The Exchange will announce the effective date of NYSE OptX in a Trader Update to be published no later than 90 days following Commission approval. The effective date will be no later than 270 days following publication of that Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [13] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering NYSE OptX as an alternate means to submit QCC Orders for execution on the Exchange would generally allow the Exchange to better compete for QCC Orders and thus enhance competition. The Exchange believes that the proposed rule change is reasonable as it could encourage OTPs to direct a greater number of QCC Orders to the Exchange instead of sending such orders to a competing exchange.

The Exchange further believes that the proposed rule change would allow the Exchange of [sic] offer a new service on an equitable and non-discriminatory basis. Specifically, the Exchange believes that use of NYSE OptX is equitable as it is voluntary and not required for OTPs to execute QCC Orders on the Exchange. Additionally, as proposed, the Exchange would provide NYSE OptX to OPTs [sic] on a non-discriminatory basis in that NYSE OptX would be available to all OTPs in a 'one-size fits all' offering in which all OTPs would be subject to the same terms and conditions and would receive the same level of service.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

[5] The term ''OTP Holder'' refers to a natural person, in good standing, who has been issued an OTP, or has been named as a Nominee. An OTP Holder must be a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, or a nominee or an associated person of a registered broker or dealer that has been approved by the Exchange to conduct business on the Exchange's Trading Facilities. *See* Rule 1.1(q).

[6] The term ''OTP Firm'' refers to a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's Trading Facilities pursuant to and in compliance with Exchange Rules. An OTP Firm must be a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934. *See* Rule 1.1(r).

[7] PrecISE Trade® is a front-end order and execution management system for trading options and stock-option combinations. *See https://www.ise.com/options/precise/.*

[8] PULSe℠ is a front end execution management system that allows users to send orders to CBOE, C2 and to other U.S. options and stock exchanges. *See https://www.cboe.org/hybrid/pulsesalessheet.pdf.*

[9] The Exchange represents that NYSE OptX is merely an instant messaging platform to link OTPs with the Exchange's trading system (*i.e.,* it is a new means of sending QCC Orders to the Exchange's existing trading system), and does not require any changes to the Exchange's communication or surveillance rules.

[10] OTPs would be required to log into NYSE OptX each trading day, similar to how they would log into any other front end order management system.

[11] OTPs would be required to provide all the essential information regarding the QCC Order when sending it to NYSE OptX, including the price of the option and the stock, the size and side of the order, *i.e.,* buy or sell, and delta. The Exchange represents that QCC Orders sent to the Exchange for execution would comply with the order format and EOC entry requirements established by the Exchange. *See* Rule 6.67—Order Format and System Entry Requirements. *See also* Amendment No. 1, *supra* note 4.

[12] All executions would be subject to the Exchange's standard transaction fees and credits applicable to QCC Orders.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[15] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change evidences the strength of competition in the options industry. Specifically, the Exchange believes the proposed rule change will enhance the competitiveness of the Exchange relative to other options exchanges that transact in QCC Orders.

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 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, as modified by Amendment No. 1, 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–2016–143 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–2016–143. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–143 and should be submitted on or before December 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2016–28034 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78f(b)(8).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79330; File No. SR–NASDAQ–2016–155]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Limit Order Protection for Members Accessing the Nasdaq Market Center

November 16, 2016.

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 November 4, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Limit Order Protection or ''LOP'' for members accessing the Nasdaq Market Center and adding rule text related to a collar applicable to Primary Pegging and Market Pegging Orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently adopted a new mechanism to protect against erroneous Limit Orders, which are entered into the Nasdaq Market Center, at Rule 4757(c).[3] This mechanism addresses risks to market participants of human error in entering Limit Orders at unintended prices. Specifically, LOP prevents certain Limit Orders from executing or being placed on the Order Book at prices outside pre-set standard limits.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78246 [sic] (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR–NASDAQ–2016–067).

The System rejects those Limit Orders, rather than executing them automatically. LOP rejects Limit Orders back to the member when the order exceeds certain defined logic. Specifically, LOP prevents certain Limit Orders at prices outside of pre-set standard limits (''LOP Limit'') from being accepted by the System.

Modifications of Orders

In its adoptive filing, the Exchange noted that LOP shall apply to all Quotes and Orders, including any modified Orders.[4] At this time, the Exchange proposes to remove ''including any modified Orders'' from the rule text at rule 4757(c)(i). The Exchange proposes to amend this language because it is misleading and may cause confusion. The Exchange proposes to state that LOP shall apply to all Quotes and Orders, including Quotes and Orders that have been modified, where the modification results in a new timestamp and priority.[5] Any Order that is modified within the System, but does not lose priority, for example an Order that was decremented, will not be subject to LOP after it was modified because the system does not cancel decremented orders from the Order Book. If an Order is cancelled either by the member or by the system and a new Order entered into the System, the new Order would be subject to LOP. For example, if the price of an Order is modified, the system will cancel the Order and the modified Order would receive a new timestamp and priority and this Order would be subject to LOP.

Exceptions to LOP

The Exchange also noted in its adoptive filing that LOP would not apply to Market Orders, Market Maker Peg Orders[6] or Intermarket Sweep Orders (ISO).[7] The Exchange proposes to modify this language to specifically state that LOP would not apply to Orders with Market and Primary Pegging.[8]

There are three types of Pegging Orders: Primary Pegging, Market Pegging and Midpoint Pegging. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO; provided, however, that if Nasdaq is the sole market center at the Best Bid or Best Offer (as applicable), then the price of any Displayed Order with Primary Pegging (as defined below) will be set with reference to the highest bid or lowest offer disseminated by a market center other than Nasdaq. An Order with a Pegging Order Attribute may be referred to as a ''Pegged Order.''[9] For purposes of this Rule 4703, the price to which an Order is pegged will be referred to as the Inside Quotation, the Inside Bid, or the Inside Offer, as appropriate. There are three varieties of Pegging:

- Primary Pegging means Pegging with reference to the Inside Quotation on the same side of the market. For example, if the Inside Bid was $11, an Order to buy with Primary Pegging would be priced at $11.
- Market Pegging means Pegging with reference to the Inside Quotation on the opposite side of the market. For example, if the Inside Offer was $11.06, an Order to buy with Market Pegging would be priced at $11.06.
- Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the ''Midpoint''). Thus, if the Inside Bid was $11 and the Inside Offer was $11.06, an Order with Midpoint Pegging would be priced at $11.03. An Order with Midpoint Pegging is not displayed. An Order with Midpoint Pegging may be executed in sub-pennies if necessary to obtain a midpoint price.

Midpoint Pegging will be the only Pegging Order subject to LOP, provided it has a limit price. Pegging is available only during Market Hours. An Order with Pegging may specify a limit price beyond which the Order may not be executed; provided, however, that if an Order has been assigned a Pegging Order Attribute and a Discretion Order[10] Attribute, the Order may execute at any price within the discretionary price range, even if beyond the limit price specified with respect to the Pegging Order Attribute. A Midpoint Pegging Order may have a discretion attribute. A Midpoint Pegging Order with a discretion price would not be subject to LOP. The Exchange notes that a Midpoint Pegging Order, similar to a Primary or Market Pegging Order, as explained below, may result is [sic] an aggressive or passive price. As a result, the LOP may remove orders that were intended to be more aggressive or passive due to the discretionary attribute. For this reason, the Exchange will not subject a Midpoint Pegging Order with a discretion price to LOP.

In addition, an Order with Primary Pegging or Market Pegging may specify an Offset Amount,[11] such that the price of the Order will vary from the Inside Quotation by the selected Offset Amount. The Offset Amount may be either aggressive or passive. Thus, for example, if a Participant entered an Order to buy with Primary Pegging and a passive Offset Amount of $0.05 and the Inside Bid was $11, the Order would be priced at $10.95. If the Participant selected an aggressive Offset Amount of $0.02, however, the Order would be priced at $11.02. An Order with Primary Pegging and an Offset Amount will not be Displayed, unless the Order is Attributable. The Exchange notes that both Market and Primary Pegging may impact the market by effecting the bid or offer.

The Exchange is not applying LOP to orders with Market or Primary Pegging because it may result in removing orders that were intended to be more aggressive or to set the bid or offer on the market due to the order attributes noted above. These Pegging Orders are also subject to a collar, which is explained in this rule change.

In contrast, an Order with Midpoint Pegging will only be at the midpoint and not have the same impact as the other two types of orders and therefore subjecting such an order to LOP does not impact the potential of the order since by definition it is set to the midpoint. An Order with Midpoint Pegging will not be displayed and is not subject to a collar.

An Order with Market Pegging and no Offset behaves as a ''market order'' with respect to any liquidity on the Nasdaq Book at the Inside Quotation on the opposite side of the market because it is

[4] If an Order is modified for price, LOP will review the order anew and, if LOP is triggered, such modification will not take effect and the original order will be rejected.

[5] *See* Rule 4756 (Entry and Display of Quotes and Orders) at (a)(3).

[6] A ''Market Maker Peg Order'' is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). The displayed price of the Market Maker Peg Order is set with reference to a ''Reference Price'' in order to keep the displayed price of the Market Maker Peg Order within a bounded price range. A Market Maker Peg Order may be entered through RASH, FIX or QIX only. A Market Maker Peg Order must be entered with a limit price beyond which the Order may not be priced. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer) (including Nasdaq), or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (*e.g.,* dividends or stock splits) in the security. *See* Nasdaq Rule 4702(b)(7).

[7] An Intermarket Sweep or ISO Order, which is an Order that is immediately executable within the Nasdaq Market Center against Orders against which they are marketable, is not subject to LOP. *See* NASDAQ Rule 4702.

[8] Orders with Market and Primary Pegging available through RASH, FIX, and QIX only.

[9] Rule 4703(d).

[10] Discretion is an Order Attribute under which an Order has a non-displayed discretionary price range within which the entering Participant is willing to trade; such an Order may be referred to as a ''Discretionary Order.'' *See* NASDAQ Rule 4703(g).

[11] An offset is not supported for a Midpoint Pegging Order.

immediately executable at that price. If, at the time of entry, there is no price to which a Pegged Order can be pegged, the Order will be rejected; provided, however, that a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, will be accepted at its limit price.

In the case of an Order with Midpoint Pegging, if the Inside Bid and Inside Offer are locked, the Order will be priced at the locking price, if the Inside Bid and Inside Offer are crossed, the Order will nevertheless be priced at the midpoint between the Inside Bid and Inside Offer, and if there is no Inside Bid and/or Inside Offer, the Order will be rejected.[12] However, even if the Inside Bid and Inside Offer are locked or crossed, an Order with Midpoint Pegging that locked or crossed an Order on the Nasdaq Book would execute (provided, however, that a Midpoint Peg Post-Only Order would execute or post as described in Rule 4702(b)(5)(A)).[13] It is important to note that only to the extent that a Midpoint Pegging Order has a limit price that the Order would be subject to LOP, unless the Midpoint Pegging Order also has a discretion attribute. If no limit price is specified, the Midpoint Pegging Order would not be subject to LOP.

LOP will be operational each trading day, except for orders designated for opening, re-opening and closing crosses and initial public offerings. LOP would not be operational during trading halts and pauses. LOP will not apply in the event that there is no established LOP Reference Price.[14] The LOP Reference Price shall be the current National Best Bid or Best Offer (NBBO), the bid for sell orders and the offer for buy orders.[15] LOP will be applicable on all protocols.[16] The LOP feature will be mandatory for all Nasdaq members.

Implementation of LOP

The Exchange indicated in its adoptive rule change that it would implement this rule within ninety (90) days of the approval of the proposed rule change.[17] At this time, the Exchange proposes to delay this implementation an additional sixty (60) days from the original timeframe in order to implement the LOP with the changes proposed herein. The Exchange will issue an Equities Trader Alert in advance to inform market participants of such implementation date.

Pegging Order Collar

In 2009, the Exchange adopted a collar for certain Unpriced Orders.[18] At that time, the Exchange defined a Collared Order as all Unpriced Orders except: (1) Market On Open Orders as defined in Rule 4752; (2) Market On Close Orders as defined in Rule 4754; (3) Unpriced Orders included by the System in any Nasdaq Halt Cross or Nasdaq Imbalance Cross, each as defined in Rule 4753; or (4) Unpriced Orders that are Reference Price Cross Orders as defined in Rule 4770. Any portion of a Collared Order that would execute (either on NASDAQ or when routed to another market center) at a price more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled. This rule related to the collar was inadvertently removed from the Exchange's rules.[19] At this time, the Exchange proposes to amend the Nasdaq rules to add the collar into the rules once again.

The purpose of the collar is to protect market participants by reducing the risk that Primary and Market Pegging Orders will execute at prices that are significantly worse than the national best bid and offer (''NBBO'') at the time the Exchange receives the order. The Exchange believes that most market participants expect that their order will be executed at its full size at a price reasonably related to the prevailing market. However, market participants may not be aware that there is insufficient liquidity at or near the NBBO to fill the entire order, particularly for more thinly-traded securities.

The Exchange proposes to memorialize this collar, which currently exists in its trading and routing systems functionality, and define it specifically as applicable to Primary and Market Pegging Orders. The Exchange seeks to memorialize the rule within Rule 4703, entitled ''Order Attributes.'' The new rule text would state, ''Primary Pegging Orders and Market Pegging Orders are subject to a collar. Any portion of a Primary Pegging Order or Market Pegging Order that would execute, either on the Exchange or when routed to another market center, at a price of more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.''

The following example illustrates how the collar works. A market participant submits a routable order to buy 500 shares. The NBBO is $6.00 bid by $6.05 offer, with 100 shares available on each side. Both sides of the NBBO are set by another market center (''Away Market''), but Nasdaq has 100 shares available at the $6.05 to sell at the offer price and also has reserve orders to sell 100 shares at $6.32 and 400 shares at $6.40. No other market center is publishing offers to sell the security in between $6.05 and $6.40.

In this example, the order would be executed in the following manner:

- 100 shares would be executed by Nasdaq at the $6.05;
- 400 shares would be routed to the Away Market as an immediate or cancel order with a price of $6.05;
- 100 shares executed by the Away Market;[20]
- 300 shares returned to Nasdaq;
- 100 shares executed by Nasdaq at $6.32 (more than $0.25 but less than 5 percent worse than the NBBO); and 200 shares, representing the remainder of the order, would be cancelled because the remaining liquidity available at $6.40 is more than 5 percent worse than the NBBO.

Implementation of Pegging Order Collar

The Exchange intends to implement the Pegging Order Collar as soon as practicable pursuant to this proposal. The Exchange requests a waiver of the

[12] This provision is subject to change by another rule change. *See* Securities Exchange Act Release No. 78908 (September 22, 2016), 81 FR 66702 (September 28, 2016) (SR–NASDAQ–2016–111). The Commission notes that it approved SR–NASDAQ–2016–111 on November 10, 2016. *See* Securities Exchange Act Release No. 79290.

[13] *Id.*

[14] For example, if there is a one-sided quote or if the NBB, when used as the LOP Reference Price, is equal to or less than $0.50.

[15] The Exchange will not accept incoming Limit Orders that exceed the LOP Reference Threshold. Limit Orders will not be accepted if the price of the Limit Order is greater than the LOP Reference Threshold for a buy Limit Order. Limit Orders will not be accepted if the price of the Limit Order is less than the LOP Reference Threshold for a sell Limit Order. The LOP Reference Threshold for buy orders will be the LOP Reference Price (offer) plus the applicable LOP Limit. The LOP Reference Threshold for sell orders will be the LOP Reference Price (bid) minus the applicable LOP Limit. The LOP Limit will be the greater of 10% of the LOP Reference Price or $0.50 for all securities across all trading sessions. The LOP Reference Price will be the current National Best Bid or Best Offer (NBBO), the bid for sell orders and the offer for buy orders.

[16] Nasdaq maintains several communications protocols for Participants to use in entering Orders and sending other messages to the Nasdaq Market Center, such as: OUCH, RASH, QIX, FLITE and FIX.

[17] *See* note 3 above.

[18] *See* Securities Exchange Act Release No. 60371 (July 23, 2009), 74 FR 38075 (July 30, 2009) (SR–NASDAQ–2009–070). An ''Unpriced Order'' was defined in this rule change as any order type permitted by the System to buy or sell shares of a security at the national best bid (best offer) (''NBBO'') at the time when the order reaches the System.

[19] *See* Securities Exchange Act Release No. 75252 (June 22, 2016), 80 FR 36865 (June 26, 2015) (SR–NASDAQ–2015–024).

[20] This assumes that the Away Market's offer was still available and that the Away Market had no additional non-displayed orders at this price.

operative delay to implement the Pegging Order Collar.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [21] in general, and furthers the objectives of Section 6(b)(5) of the Act [22] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by mitigating risks to market participants of human error in entering Limit Orders at clearly unintended prices. The proposal will allow for protections for Limit Orders, which should encourage price continuity and, in turn, protect investors and the public interest by reducing executions occurring at dislocated prices.

The Exchange's proposal to amend the language concerning the modification of Orders is consistent with the Act because only new Orders would be subject to LOP. The proposed new language specifies that Orders that are modified for size and remain in the Order Book with the same priority, because only size was modified to reduce the size, will not be subject to LOP. Other modifications to Orders that amend the timestamp or priority will subject the modified orders to LOP because these Orders will be submitted into the System as new Orders. The LOP functionality protects market participants by reducing the risk that Midpoint Pegging Orders will execute at prices that are significantly worse than the national best bid and offer (''NBBO'') at the time the Exchange receives the order.

The LOP feature assists with the maintenance of fair and orderly markets by mitigating the risks associated with errors resulting in executions at prices that are away from the Best Bid or Offer and potentially erroneous. Further, it protects investors from potentially receiving executions away from the prevailing prices at any given time. The Exchange adopted LOP to avoid a series of improperly priced aggressive orders transacting in the Order Book.

The Exchange believes that excluding Primary Pegging and Market Pegging Orders is consistent with the Act because including such orders may result in removing orders that were intended to be more aggressive or to set the bid or offer on the market due to the order attributes noted in the Purpose section of this rule change. Market and Primary Pegging Orders are also currently subject to a collar. Market and Primary Pegging Orders that would execute, either on the Exchange or when routed to another market center, at a price of more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.[23] Further, the Market Pegging Order has its own process for rejecting those orders where no price exists to which a Pegged Order can be pegged.

This feature should create a level of protection that prevents the Limit Orders from entering the Order Book outside of an acceptable range for the Limit Order to execute. The LOP should reduce the negative impacts of sudden, unanticipated volatility, and serve to preserve an orderly market in a transparent and uniform manner, increase overall market confidence, and promote fair and orderly markets and the protection of investors.

Pegging Order Collar

The Exchange believes that the collar proposal is consistent with the Act because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by avoiding execution of Primary and Market Pegging Orders (either on Nasdaq or on other market centers as a result of orders routed by Nasdaq) at prices that are significantly worse than the NBBO at the time the order is initially received. The NBBO provides reasonable guidance of the current value of a given security and therefore market participants should have confidence that their Market and Primary Pegging Orders will not be executed at a significantly worse price than the NBBO.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The LOP feature should provide market participants with additional price protection from anomalous executions. This feature is not optional and is applicable to all members submitting Limit Orders. Thus, the Exchange does not believe the proposal creates any significant impact on competition. In addition, the proposed collar in Rule 4703 would be applicable to all Market and Primary Pegging Orders entered into the Nasdaq System. Similarly, all Midpoint Pegging Order will be subject to LOP, unless they have a discretion attribute.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or 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 and Rule 19b–4(f)(6) thereunder.[24]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [25] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [26] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. When the Exchange first proposed the LOP, the Exchange represented that it would implement the LOP within 90 days of obtaining Commission approval (*i.e.,* by November 22, 2016).[27] The Exchange now proposes to extend the LOP implementation date by 60 days in order to include the modifications in this proposed rule change with the implementation of the LOP. Waiver of the 30-day operative delay would allow the Exchange to immediately extend the

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] The Exchange inadvertently removed the rule from the Nasdaq Rulebook. The Exchange proposes to adopt the rule herein.

[24] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] *See* Securities Exchange Act Release Nos. 78246 (July 7, 2016), 81 FR 45332 (July 13, 2016) (noticing SR–NASDAQ–2016–067) and 78667 (August 24, 2016), 81 FR 59672 (August 30, 2016) (approving SR–NASDAQ–2016–067).

LOP implementation date. The waiver would also permit the Exchange to immediately clarify the application of the LOP to modified orders. Moreover, the waiver would allow the Exchange to immediately exclude from the LOP Market Pegging Orders, Primary Pegging Orders, and Midpoint Pegging Orders that have a discretion price. As noted above, the Exchange proposes to exclude these Orders because these Orders may be intended to be aggressive or to set the bid or offer on the market. Moreover, as noted above, Market and Primary Pegging Orders are currently subject to collars. Lastly, the waiver would allow the Exchange's rules to immediately and accurately reflect the current collars for Market and Primary Pegging Orders, which were removed inadvertently. Accordingly, the Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.[28]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–155 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–NASDAQ–2016–155. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–155 and should be submitted on or before December 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Brent J. Fields,

Secretary.

[FR Doc. 2016–28037 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

[28] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79331; File No. SR–MIAX–2016–43]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 605 Market Maker Orders

November 16, 2016.

Pursuant to the provisions of 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 November 3, 2016, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 605 (Market Maker Orders).

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 605 (Market Maker Orders) to (i) provide that a MIAX Market Maker[3] may not enter good 'til cancelled (''GTC'') orders[4] in option classes to which the MIAX Market Maker is not appointed, and (ii) add a comparable provision setting forth the types of orders that an Electronic Exchange Member (''EEM'')[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Maker'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'', collectively. *See* Exchange Rule 100.

[4] A Good 'til Cancelled or ''GTC'' order is an order to buy or sell which remains in effect until it is either executed, cancelled or the underlying option expires. *See* Exchange Rule 516(l).

[5] The term ''Electronic Exchange Member'' means the holder of a Trading permit who is not a Market

may enter for the proprietary account of a non-MIAX Market Maker.[6]

Rule 605 presently governs the submission of orders by MIAX Market Makers, differentiating between orders submitted in classes to which the Market Maker is appointed and orders submitted in classes to which the Market Maker is not appointed. Paragraph (a) governs option classes to which the Market Maker is appointed. Pursuant to paragraph (a), Market Makers may not enter market orders or GTC orders in their appointed classes. Paragraph (b) governs option classes other than those to which the Market Maker is appointed. Subparagraph (b)(1) provides that Market Makers may enter all types of orders that are permitted to be entered by Non-Customer[7] participants under the Rules, except for market orders. Subparagraphs (b)(2) and (b)(3) place limitations on the overall percentage of executions that can occur in the non-appointed classes. Specifically, subparagraph (b)(2) limits a Registered Market Maker's[8] total number of contracts executed in non-appointed option classes to 25% of the Registered Market Maker's total number of contracts executed in its appointed option classes, and subparagraph (b)(3) limits a Lead Market Maker's[9] total number of contracts executed in non-appointed option classes to 10% of the Lead Market Maker's total number of contracts executed in its appointed option classes. Paragraph (c) governs priority of Market Maker orders, providing that Market Maker orders will always be allocated with other Professional Interest[10] (such as orders from broker-dealers, firms, non-Priority Customers[11] and non-priority Market Maker quotes) and after both Priority Customer interest and priority Market Maker quotes have been satisfied. The Exchange is not proposing to amend paragraph (a), subparagraphs (b)(2) or (b)(3), or paragraph (c).

The Exchange is proposing to amend subparagraph (b)(1) to provide that a Market Maker may not enter GTC orders in option classes to which the Market Maker is not appointed. Thus, as amended, pursuant to subparagraph (b)(1), a Market Maker may enter all order types permitted to be entered by Non-Customer participants under the Rules, except for market orders and GTC orders, in classes of options to which the Market Maker is not appointed. The purpose of this amendment is to make the permissible order types for Market Makers in non-appointed option classes consistent with the permissible order types in their appointed option classes. Accordingly, in both appointed and non-appointed option classes, Market Makers may enter all order types, except for market orders and GTC orders. The Exchange believes that making the permissible order types for Market Makers consistent in both appointed and non-appointed options classes simplifies order types across the Exchange for such participants. The Exchange also believes that GTC orders offer no advantage to Market Makers over day limit orders (which are a permissible order type for Market Makers in both appointed and non-appointed option classes) under the Exchange's market structure, including, but not limited to, under the priority and trade allocation rules (Exchange Rule 514) and various risk protection mechanism rules applicable to Market Makers (such as, for example, Exchange Rule 612, Aggregate Risk Manager). When the Exchange initially adopted Exchange Rule 605, the Exchange determined to permit Market Makers to enter GTC orders in non-appointed option classes. However, since adoption, the Exchange has observed that Market Makers generally have not entered GTC orders in their non-appointed option classes. Accordingly, since this is an unused order type for Market Makers and in order to promote consistency across the Exchange of available order types for Market Makers, the Exchange now proposes that Market Makers may not enter GTC orders in non-appointed option classes so that the permissible order types for Market Makers in non-appointed option classes are the same as those for Market Makers in appointed option classes.

The Exchange is also proposing to add new paragraph (d) to Rule 605 to establish the permissible order types that an EEM may enter for the proprietary account of a non-MIAX Market Maker. Pursuant to proposed paragraph (d), the permissible order types that an EEM may enter for the proprietary account of a non-MIAX Market Maker includes all order types permitted to be entered under the Rules by Members, except for market orders and GTC orders. Accordingly, the Exchange is proposing to make the permissible order types for non-MIAX Market Makers consistent with the permissible order types for MIAX Market Makers. The Exchange believes that making the permissible order types for the accounts of non-MIAX Market Makers consistent with the permissible order types for MIAX Market Makers simplifies order types across the Exchange for such participants. As discussed above, the Exchange also believes that GTC orders offer no advantage to non-MIAX Market Makers over day limit orders (which are a permissible order type for non-MIAX Market Makers) under the Exchange's market structure, including, but not limited to, under the priority and trade allocation rules (Exchange Rule 514) and various risk protection mechanism rules applicable to EEMs (such as, for example, Exchange Rule 519, MIAX Order Monitor, and Exchange Rule 519A, Risk Protection Monitor). The Exchange further believes that non-MIAX Market Makers (and, for that matter, MIAX Market Makers) are sophisticated professionals and thus generally do not use market orders. When the Exchange initially adopted Exchange Rule 605, the Exchange did not place any limitation on the types of orders that could be entered by an EEM for the proprietary account of a non-MIAX Market Maker. However, since adoption, the Exchange has observed that EEMs generally have not entered GTC orders or market orders for the proprietary account of non-MIAX Market Makers. Accordingly, since these are unused order types for non-MIAX Market Makers and in order to promote consistency across the Exchange of available order types for both non-MIAX Market Makers and Market Makers, the Exchange now proposes that EEMs may not enter GTC orders or market orders for the proprietary accounts of non-MIAX Market Makers so that the

Maker. Electronic Exchange members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] The term ''non-MIAX Market Maker'' means a market participant that is market maker registered as such on another options exchange. *See* Exchange Fee Schedule, Section 1)a)ii), Other Market Participant Fees, in the notes table.

[7] The term ''Non-Customer'' means a person or entity that is a broker or dealer in securities. *See* Exchange Rule 100.

[8] The term ''Registered Market Maker'' means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange, who is not a Lead Market Maker and is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Registered Market Makers. *See* Exchange Rule 100.

[9] The term ''Lead Market Maker'' means a Member registered with the Exchange for the purpose of making markets in securities traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these Rules with respect to Lead Market Makers. When a Lead Market Maker is appointed to act in the capacity of a Primary Lead Market Maker, the additional rights and responsibilities of a Primary Lead Market Maker specified in Chapter VI of these Rules will apply. *See* Exchange Rule 100.

[10] The term ''Professional Interest'' means (i) an order that is for the account of a person or entity that is not a Priority Customer, or (ii) an order or non-priority quote for the account of a Market Maker. *See* Exchange Rule 100.

[11] The term ''Priority Customer'' means an order for the account of a Priority Customer. *See* Exchange Rule 100.

permissible order types available to non-MIAX Market Makers are the same as those for Market Makers.

The Exchange believes that its proposal to define the permissible order types that an EEM may enter for the proprietary account of a non-MIAX Market Maker to include all order types permitted to be entered under the Rules by Members, except for market orders and GTC orders, is reasonable, equitable and not unfairly discriminatory because the same rule applies identically to MIAX Market Makers. Thus, the Exchange is treating all market makers (both MIAX Market Makers and non-MIAX Market Makers) the same, with respect to permissible order types for such market participants.

The Exchange notes that there is no uniform treatment of permissible order types for market makers among the various options exchanges. Some exchanges place no limitation on the types of orders that can be entered by market makers, such as NYSE Arca, Inc. (''NYSE Arca'') and NYSE MKT LLC (''NYSE MKT'').[12] Both such exchanges permit a market maker to enter all order types permitted to be entered by users under the rules, in both appointed and non-appointed option classes. Other exchanges do place certain limitations on permissible order types, with varying degree. Some differentiate between appointed and non-appointed options classes, and some don't. For example, International Securities Exchange, LLC (''ISE'') permits opening only orders, IOC orders, market orders, fill-or-kill orders, sweep orders, complex orders, and block-size orders in appointed classes.[13] It permits all order types permissible for non-customers in non-appointed classes.[14] NASDAQ PHLX LLC (''PHLX'') permits limit on opening, IOC, sweep, and day limit in appointed classes; and limit on opening, IOC, sweep, day limit, and GTC in non-appointed classes.[15] Accordingly, the Exchange believes that each options exchange generally determines permissible order types for market makers in its trading environment based on the exchange's individual business policy, objectives, and trading system. The Exchange's proposal reflects its policy and objectives, and it treats all market makers uniformly with respect to permissible order types. Therefore, the Exchange believes that the structure that it is proposing is reasonable, equitable, and not unfairly discriminatory.

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 60 days following the operative date of the proposed rule. The implementation date will be no later than 60 days following the issuance of the Regulatory Circular.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(5) of the Act [17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the Exchange believes this proposed rule change promotes just and equitable principles of trade because it simplifies order types across the Exchange for Market Makers. It eliminates order types that generally have not been entered by Market Makers and non-MIAX Market Makers. It makes consistent the types of orders than can be entered for both Market Makers and non-MIAX Market Makers. It makes the permissible order types for Market Makers in non-appointed option classes consistent with the permissible order types in their appointed option classes.

The Exchange believes that making the permissible order types for Market Makers consistent in both appointed and non-appointed options classes simplifies order types across the Exchange for such participants. The Exchange also believes that GTC orders offer no advantage to Market Makers over day limit orders (which are a permissible order type for Market Makers in both appointed and non-appointed option classes) under the Exchange's market structure, including, but not limited to, under the priority and trade allocation rules (Exchange Rule 514) and various risk protection mechanism rules applicable to Market Makers (such as, for example, Exchange Rule 612, Aggregate Risk Manager). The Exchange has observed that Market Makers generally have not entered GTC orders in their non-appointed option classes. Accordingly, since this is an unused order type for Market Makers and in order to promote consistency across the Exchange of available order types for Market Makers, the Exchange believes that its proposed rule change to provide that Market Makers may not enter GTC orders in non-appointed option classes so that the permissible order types for Market Makers in non-appointed option classes are the same as those for Market Makers in appointed option classes promotes just and equitable principles of trade.

The Exchange believes that its proposal to define the permissible order types that an EEM may enter for the proprietary account of a non-MIAX market maker to include all order types permitted to be entered under the Rules by Members, except for market orders and GTC orders, is reasonable, equitable and not unfairly discriminatory because the same rule applies identically to MIAX Market Makers. Thus, the Exchange is treating all market makers (both MIAX Market Makers and non-MIAX market makers) the same, with respect to permissible order types for such market participants. The Exchange also believes that GTC orders offer no advantage to non-MIAX Market Makers over day limit orders (which are a permissible order type for non-MIAX Market Makers) under the Exchange's market structure, including, but not limited to, under the priority and trade allocation rules (Exchange Rule 514) and various risk protection mechanism rules applicable to EEMs (such as, for example, Exchange Rule 519, MIAX Order Monitor, and Exchange Rule 519A, Risk Protection Monitor). The Exchange further believes that non-MIAX Market Makers (and, for that matter, MIAX Market Makers) are sophisticated professionals and thus generally do not use market orders. The Exchange has observed that EEMs generally have not entered GTC orders or market orders for the proprietary account of non-MIAX Market Makers. Accordingly, since these are unused order types for non-MIAX Market Makers and in order to promote consistency across the Exchange of available order types for both non-MIAX Market Makers and Market Makers, the Exchange believes that its proposal that EEMs may not enter GTC orders or market orders for the proprietary accounts of non-MIAX Market Makers so that the permissible order types available to non-MIAX Market Makers are the same as those for Market Makers promotes just and equitable principles of trade.

[12] *See* NYSE Arca Rule 6.37C and NYSE Mkt Rule 925.2NY.

[13] *See* ISE Rule 805.

[14] *Id.*

[15] *See* PHLX Rule 1080(b).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market comprised of fourteen U.S. options exchanges in which sophisticated and knowledgeable market participants can, and do, send order flow to competing exchanges if they deem trading practices at a particular exchange to be onerous or cumbersome. The proposed rule change allows the Exchange to make consistent across the Exchange the permissible order types available for both MIAX Market Makers and non-MIAX market makers. This consistency places all such market participants on an equal footing, and, as a consequence, will not 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 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) [19] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2016–43 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–MIAX–2016–43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2016–43 and should be submitted on or before December 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Brent J. Fields,

Secretary.

[FR Doc. 2016–28025 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32360; File No. 812–14547]

Legg Mason ETF Equity Trust, et al.; Notice of Application

November 16, 2016.

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. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure.

Applicants: Legg Mason Partners Fund Advisor, LLC (''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, Legg Mason ETF Equity Trust and Legg Mason ETF Trust (each a ''Trust,'' and together, the ''Trusts''), each a

Maryland statutory trust registered under the Act as an open-end management investment company with multiple series, and Legg Mason Investor Services, LLC (''Distributor''), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

DATES: *Filing Dates:* The application was filed on September 15, 2015, and amended on January 20, 2016 and July 11, 2016.

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 December 12, 2016, 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: Trusts and Initial Adviser, 620 Eighth Avenue, New York, NY 10018; Distributer, 100 International Drive, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: Jessica Shin, Attorney-Adviser, at (202) 551–5921, or David J. Marcinkus, 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.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Instruments''). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as 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. 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 represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund 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 or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a

[1] Applicants request that the order apply to the Funds and any additional series of the Trusts, and any other open-end management investment company or series thereof, that may be created in the future (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.

Fund 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.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–28029 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

[2] 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, moreover, 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 a Second-Tier Affiliate, 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.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 17f–1(g); SEC File No. 270–30, OMB Control No. 3235–0290.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501*et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17f–1(g) (17 CFR 240.17f–1(g)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17f–1(g) requires that all reporting institutions (*i.e.,* every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank insured by the FDIC) maintain and preserve a number of documents related to their participation in the Lost and Stolen Securities Program (''Program'') under Rule 17f–1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (1) Copies of all reports of theft or loss (Form X–17F–1A) filed with the Commission's designee: (2) All agreements between reporting institutions regarding registration in the Program or other aspects of Rule 17f–1; and (3) all confirmations or other information received from the Commission or its designee as a result of inquiry.

Reporting institutions utilize these records and reports (a) to report missing, lost, stolen or counterfeit securities to the database, (b) to confirm inquiry of the database, and (c) to demonstrate compliance with Rule 17f–1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f–1. If such records were not retained by reporting institutions, compliance with Rule 17f–1 could not be monitored effectively.

The Commission estimates that there are approximately 12,971 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (a total of 33 minutes or 0.55 hours per respondent per year). Thus, the total estimated annual time burden for all respondents is 7,134 hours ($12{,}971 \times 0.55$ hours = 7,134). Assuming an average hourly cost for clerical work of $50.00, the average total yearly record retention cost of compliance for each respondent would be $27.50 ($\$50 \times 0.55$ hours). Based on these estimates, the total annual compliance cost for the estimated 12,971 reporting institutions would be approximately $356,702 ($12{,}971 \times \$27.50$).

Rule 17f–1(g) does not require periodic collection, but it does require retention of records generated as a result of compliance with Rule 17f–1. Under Section 17(b) and (f) of the Act, the information required by Rule 17f–1(g) is available to the Commission and Federal bank regulators for examinations or collection purposes. Rule 0–4 of the Securities Exchange Act deems such information to be confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: November 16, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–28026 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79329; File No. SR–BX–2016–058]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Limit Order Protection

November 16, 2016.

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 November 4, 2016, NASDAQ BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Limit Order Protection or ''LOP'' for members accessing the BX Market Center and adding rule text related to a collar applicable to Primary Pegging and Market Pegging Orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqbx.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently adopted a new mechanism to protect against erroneous Limit Orders which are entered into the BX Market Center at Rule 4757(d).[3] This mechanism addresses risks to market participants of human error in entering Limit Orders at unintended prices. Specifically, LOP prevents certain Limit Orders from executing or being placed on the Order Book at prices outside pre-set standard limits. The System rejects those Limit Orders, rather than executing them automatically. LOP rejects Limit Orders back to the member when the order exceeds certain defined logic. Specifically, LOP prevents certain Limit Orders at prices outside of pre-set standard limits (''LOP Limit'') from being accepted by the System.

Modifications of Orders

In its adoptive filing, the Exchange noted that LOP shall apply to all Quotes and Orders, including any modified Orders.[4] At this time, the Exchange proposes to remove ''including any modified Orders'' from the rule text at rule 4757(d)(i). The Exchange proposes to amend this language because it is misleading and may cause confusion.

The Exchange proposes to state that LOP shall apply to all Quotes and Orders, including Quotes and Orders that have been modified, where the modification results in a new timestamp and priority.[5] Any Order that is modified within the System, but does not lose priority, for example an Order that was decremented, will not be subject to LOP after it was modified because the system does not cancel decremented orders from the Order Book. If an Order is cancelled either by the member or by the system and a new Order entered into the System, the new Order would be subject to LOP. For example, if the price of an Order is modified, the system will cancel the Order and the modified Order would receive a new timestamp and priority and this Order would be subject to LOP.

Exceptions to LOP

The Exchange also noted in its adoptive filing that LOP would not apply to Market Orders, Market Maker Peg Orders[6] or Intermarket Sweep Orders (ISO).[7] The Exchange proposes to modify this language to specifically state that LOP would not apply to Orders with Market and Primary Pegging.[8]

There are three types of Pegging Orders: Primary Pegging, Market Pegging and Midpoint Pegging. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO; provided, however, that if BX is the sole market center at the Best Bid or Best Offer (as applicable), then the price of any Displayed Order with Primary Pegging (as defined below) will be set with reference to the highest bid or lowest offer disseminated by a market center other than BX. An Order with a Pegging Order Attribute may be referred to as a ''Pegged Order.''[9] For purposes of this Rule 4703, the price to which an Order is pegged will be referred to as the Inside Quotation, the Inside Bid, or the Inside Offer, as appropriate. There are three varieties of Pegging:

- Primary Pegging means Pegging with reference to the Inside Quotation on the same side of the market. For example, if the Inside Bid was $11, an Order to buy with Primary Pegging would be priced at $11.
- Market Pegging means Pegging with reference to the Inside Quotation on the opposite side of the market. For example, if the Inside Offer was $11.06, an Order to buy with Market Pegging would be priced at $11.06.
- Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the ''Midpoint''). Thus, if the Inside Bid was

[3] *See* Securities Exchange Act Release No. 78246 [sic] (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR–BX–2016–037).

[4] If an Order is modified for price, LOP will review the order anew and, if LOP is triggered, such modification will not take effect and the original order will be rejected.

[5] *See* Rule 4756 (Entry and Display of Quotes and Orders) at (a)(3).

[6] A ''Market Maker Peg Order'' is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). The displayed price of the Market Maker Peg Order is set with reference to a ''Reference Price'' in order to keep the displayed price of the Market Maker Peg Order within a bounded price range. A Market Maker Peg Order may be entered through RASH, FIX or QIX only. A Market Maker Peg Order must be entered with a limit price beyond which the Order may not be priced. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer) (including BX), or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (*e.g.,* dividends or stock splits) in the security. *See* BX Rule 4702(b)(7).

[7] An Intermarket Sweep or ISO Order, which is an Order that is immediately executable within BX against Orders against which they are marketable, is not subject to LOP. *See* BX Rule 6951(g).

[8] Orders with Market and Primary Pegging available through RASH, FIX, and QIX only.

[9] Rule 4703(d).

$11 and the Inside Offer was $11.06, an Order with Midpoint Pegging would be priced at $11.03. An Order with Midpoint Pegging is not displayed. An Order with Midpoint Pegging may be executed in sub-pennies if necessary to obtain a midpoint price.

Midpoint Pegging will be the only Pegging Order subject to LOP, provided it has a limit price. Pegging is available only during Market Hours. An Order with Pegging may specify a limit price beyond which the Order may not be executed; provided, however, that if an Order has been assigned a Pegging Order Attribute and a Discretion Order [10] Attribute, the Order may execute at any price within the discretionary price range, even if beyond the limit price specified with respect to the Pegging Order Attribute. A Midpoint Pegging Order may have a discretion attribute. A Midpoint Pegging Order with a discretion price would not be subject to LOP.

The Exchange notes that a Midpoint Pegging Order, similar to a Primary or Market Pegging Order, as explained below, may result is [sic] an aggressive or passive price. As a result, the LOP may remove orders that were intended to be more aggressive or passive due to the discretionary attribute. For this reason, the Exchange will not subject a Midpoint Pegging Order with a discretion price to LOP.

In addition, an Order with Primary Pegging or Market Pegging may specify an Offset Amount, such that the price of the Order will vary from the Inside Quotation by the selected Offset Amount.[11] The Offset Amount may be either aggressive or passive. Thus, for example, if a Participant entered an Order to buy with Primary Pegging and a passive Offset Amount of $0.05 and the Inside Bid was $11, the Order would be priced at $10.95. If the Participant selected an aggressive Offset Amount of $0.02, however, the Order would be priced at $11.02. An Order with Primary Pegging and an Offset Amount will not be Displayed, unless the Order is Attributable. The Exchange notes that both Market and Primary Pegging may impact the market by effecting the bid or offer.

The Exchange is not applying LOP to orders with Market or Primary Pegging because it may result in removing orders that were intended to be more aggressive or to set the bid or offer on the market due to the order attributes noted above. These Pegging Orders are also subject to a collar, which is explained in this rule change.

In contrast, an Order with Midpoint Pegging will only be at the midpoint and not have the same impact as the other two types of orders and therefore subjecting such an order to LOP does not impact the potential of the order since by definition it is set to the midpoint. An Order with Midpoint Pegging will not be displayed and is not subject to a collar.

An Order with Market Pegging and no Offset behaves as a ''market order'' with respect to any liquidity on the BX Book at the Inside Quotation on the opposite side of the market because it is immediately executable at that price. If, at the time of entry, there is no price to which a Pegged Order can be pegged, the Order will be rejected; provided, however, that a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, will be accepted at its limit price.

In the case of an Order with Midpoint Pegging, if the Inside Bid and Inside Offer are locked, the Order will be priced at the locking price, if the Inside Bid and Inside Offer are crossed, the Order will nevertheless be priced at the midpoint between the Inside Bid and Inside Offer, and if there is no Inside Bid and/or Inside Offer, the Order will be rejected.[12] However, even if the Inside Bid and Inside Offer are locked or crossed, an Order with Midpoint Pegging that locked or crossed an Order on the BX Book would execute (provided, however, that a Midpoint Peg Post-Only Order would execute or post as described in Rule 4702(b)(5)(A)).[13] It is important to note that only to the extent that a Midpoint Pegging Order has a limit price that the Order would be subject to LOP, unless the Midpoint Pegging Order also has a discretion attribute. If no limit price is specified, the Midpoint Pegging Order would not be subject to LOP.

LOP will be operational each trading day, except during trading halts and pauses. LOP will not apply in the event that there is no established LOP Reference Price.[14] The LOP Reference Price shall be the current National Best Bid or Best Offer (NBBO), the bid for sell orders and the offer for buy orders.[15]

LOP will be applicable on all protocols.[16] The LOP feature will be mandatory for all BX members.

Implementation of LOP

The Exchange indicated in its adoptive rule change that it would implement this rule within ninety (90) days of the approval of the proposed rule change.[17] At this time, the Exchange proposes to delay this implementation an additional sixty (60) days from the original timeframe in order to implement the LOP with the changes proposed herein. The Exchange will issue an Equities Trader Alert in advance to inform market participants of such implementation date.

Pegging Order Collar

In 2009, the Exchange adopted a collar for certain Unpriced Orders.[18] At that time, the Exchange defined an Unpriced Order as any order type permitted by the System to buy or sell shares of a security at the national best bid (best offer) (''NBBO'') at the time when the order reaches the System. Any portion of an Unpriced Order that would execute on BX at a price more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.

This rule related to the collar was inadvertently removed from the

[10] Discretion is an Order Attribute under which an Order has a non-displayed discretionary price range within which the entering Participant is willing to trade; such an Order may be referred to as a ''Discretionary Order.'' *See* BX Rule 4703(g).

[11] An offset is not supported for a Midpoint Pegging Order.

[12] This provision is subject to change by another rule change. *See* Securities Exchange Act Release No. 78909 (September 22, 2016), 81 FR 66708 (September 28, 2016) (SR–BX–2016–046). The Commission notes that it approved SR–BX–2016–046 on November 10, 2016. *See* Securities Exchange Act Release No. 79290.

[13] *Id.*

[14] For example, if there is a one-sided quote or if the NBB, when used as the LOP Reference Price, is equal to or less than $0.50.

[15] The Exchange will not accept incoming Limit Orders that exceed the LOP Reference Threshold. Limit Orders will not be accepted if the price of the Limit Order is greater than the LOP Reference Threshold for a buy Limit Order. Limit Orders will not be accepted if the price of the Limit Order is less than the LOP Reference Threshold for a sell Limit Order. The LOP Reference Threshold for buy orders will be the LOP Reference Price (offer) plus the applicable percentage specified in the LOP Limit. The LOP Reference Threshold for sell orders will be the LOP Reference Price (bid) minus the applicable percentage specified in the LOP Limit. The LOP Limit will be the greater of 10% of the LOP Reference Price or $0.50 for all securities across all trading sessions. The LOP Reference Price will be the current National Best Bid or Best Offer (NBBO), the bid for sell orders and the offer for buy orders.

[16] BX maintains several communications protocols for members to use in entering Orders and sending other messages to BX, such as: OUCH, RASH, FLITE, and FIX.

[17] *See* note 3 above.

[18] *See* Securities Exchange Act Release No. 63052 (October 6, 2010), 75 FR 62902 (October 13, 2010) (SR–BX–2010–067). An ''Unpriced Order'' was defined in this rule change as any order type permitted by the System to buy or sell shares of a security at the national best bid (best offer) (''NBBO'') at the time when the order reaches the System.

Exchange's rules.[19] At this time, the Exchange proposes to amend the BX rules to add the collar into the rules once again.

The purpose of the collar is to protect market participants by reducing the risk that Primary and Market Pegging Orders will execute at prices that are significantly worse than the national best bid and offer (''NBBO'') at the time the Exchange receives the order. The Exchange believes that most market participants expect that their order will be executed at its full size at a price reasonably related to the prevailing market. However, market participants may not be aware that there is insufficient liquidity at or near the NBBO to fill the entire order, particularly for more thinly-traded securities.

The Exchange proposes to memorialize this collar, which currently exists in its trading and routing systems functionality, and define it specifically as applicable to Primary and Market Pegging Orders. The Exchange seeks to memorialize the rule within Rule 4703, entitled ''Order Attributes.'' The new rule text would state, ''Primary Pegging Orders and Market Pegging Orders are subject to a collar. Any portion of a Primary Pegging Order or Market Pegging Order that would execute, either on the Exchange or when routed to another market center, at a price of more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.''

The following example illustrates how the collar works. A market participant submits a routable order to buy 500 shares. The NBBO is $6.00 bid by $6.05 offer, with 100 shares available on each side. Both sides of the NBBO are set by another market center (''Away Market''), but BX has 100 shares available at the $6.05 to sell at the offer price and also has reserve orders to sell 100 shares at $6.32 and 400 shares at $6.40. No other market center is publishing offers to sell the security in between $6.05 and $6.40.

In this example, the order would be executed in the following manner:

- 100 shares would be executed by BX at the $6.05;
- 400 shares would be routed to the Away Market as an immediate or cancel order with a price of $6.05;
- 100 shares executed by the Away Market;[20]
- 300 shares returned to BX;
- 100 shares executed by BX at $6.32 (more than $0.25 but less than 5 percent worse than the NBBO); and 200 shares, representing the remainder of the order, would be cancelled because the remaining liquidity available at $6.40 is more than 5 percent worse than the NBBO.

Implementation of Pegging Order Collar

The Exchange intends to implement the Pegging Order Collar as soon as practicable pursuant to this proposal. The Exchange requests a waiver of the operative delay to implement the Pegging Order Collar.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by mitigating risks to market participants of human error in entering Limit Orders at clearly unintended prices. The proposal will allow for protections for Limit Orders which should encourage price continuity and, in turn, protect investors and the public interest by reducing executions occurring at dislocated prices.

The Exchange's proposal to amend the language concerning the modification of Orders is consistent with the Act because only new Orders would be subject to LOP. The proposed new language specifies that Orders that are modified for size and remain in the Order Book with the same priority, because only size was modified to reduce the size, will not be subject to LOP. Other modifications to Orders that amend the timestamp or priority will subject the modified orders to LOP because these Orders will be submitted into the System as new Orders. The LOP functionality protects market participants by reducing the risk that Midpoint Pegging Orders will execute at prices that are significantly worse than the national best bid and offer (''NBBO'') at the time the Exchange receives the order.

The LOP feature assists with the maintenance of fair and orderly markets by mitigating the risks associated with errors resulting in executions at prices that are away from the Best Bid or Offer and potentially erroneous. Further it protects investors from potentially receiving executions away from the prevailing prices at any given time. The Exchange adopted LOP to avoid a series of improperly priced aggressive orders transacting in the Order Book.

The Exchange believes that excluding Primary Pegging and Market Pegging Orders is consistent with the Act because including such orders may result in removing orders that were intended to be more aggressive or to set the bid or offer on the market due to the order attributes noted in the Purpose section of this rule change. Market and Primary Pegging Orders are also currently subject to a collar. Market and Primary Pegging Orders that would execute, either on the Exchange or when routed to another market center, at a price of more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.[23] Further, the Market Pegging Order has its own process for rejecting those orders where no price exists to which a Pegged Order can be pegged.

This feature should create a level of protection that prevents the Limit Orders from entering the Order Book outside of an acceptable range for the Limit Order to execute. The LOP should reduce the negative impacts of sudden, unanticipated volatility, and serve to preserve an orderly market in a transparent and uniform manner, increase overall market confidence, and promote fair and orderly markets and the protection of investors.

Pegging Order Collar

The Exchange believes that the collar proposal is consistent with the Act because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by avoiding execution of Primary and Market Pegging Orders (either on BX or on other market centers as a result of orders routed by BX) at prices that are significantly worse than the NBBO at the time the order is initially received. The NBBO provides reasonable guidance of the current value of a given security and therefore market participants should have confidence that their Market and Primary Pegging Orders will not be executed at a significantly worse price than the NBBO.

[19] *See* Securities Exchange Act Release No. 74617 (March 31, 2015), 80 FR 18473 (March 31, 2015) (SR–BX–2015–015).

[20] This assumes that the Away Market's offer was still available and that the Away Market had no additional non-displayed orders at this price.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] The Exchange inadvertently removed the rule from the BX Rulebook. The Exchange proposes to adopt the rule herein.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The LOP feature should provide market participants with additional price protection from anomalous executions. This feature is not optional and is applicable to all members submitting Limit Orders. Thus, the Exchange does not believe the proposal creates any significant impact on competition. In addition, the proposed collar in Rule 4703 would be applicable to all Market and Primary Pegging Orders entered into the BX System. Similarly, all Midpoint Pegging Order will be subject to LOP, unless they have a discretion attribute.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or 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 and Rule 19b–4(f)(6) thereunder.[24]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[25] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[26] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. When the Exchange first proposed the LOP, the Exchange represented that it would implement the LOP within 90 days of obtaining Commission approval (*i.e.,* by November 22, 2016).[27] The Exchange now proposes to extend the LOP implementation date by 60 days in order to include the modifications in this proposed rule change with the implementation of the LOP. Waiver of the 30-day operative delay would allow the Exchange to immediately extend the LOP implementation date. The waiver would also permit the Exchange to immediately clarify the application of the LOP to modified orders. Moreover, the waiver would allow the Exchange to immediately exclude from the LOP Market Pegging Orders, Primary Pegging Orders, and Midpoint Pegging Orders that have a discretion price. As noted above, the Exchange proposes to exclude these Orders because these Orders may be intended to be aggressive or to set the bid or offer on the market. Moreover, as noted above, Market and Primary Pegging Orders are currently subject to collars. Lastly, the waiver would allow the Exchange's rules to immediately and accurately reflect the current collars for Market and Primary Pegging Orders, which were removed inadvertently. Accordingly, the Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.[28]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–058 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–BX–2016–058. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2016–058 and should be submitted on or before December 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Brent J. Fields,

Secretary.

[FR Doc. 2016–28036 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] *See* Securities Exchange Act Release Nos. 78244 (July 7, 2016), 81 FR 45320 (July 13, 2016) (noticing SR–BX–2016–037) and 78667 (August 24, 2016), 81 FR 59672 (August 30, 2016) (approving SR–BX–2016–037).

[28] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79324; File No. SR–ICC–2016–013]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change to Amend the ICE Clear Credit Clearing Rules

November 16, 2016.

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 November 4, 2016, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Rulebook (the ''Rules'') to amend the ICC Clearing Rules (''ICC Rules'') relating to default management, clearing house recovery and wind-down, and to adopt certain related default auction procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and tatutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICC submits proposed amendments to the ICC Rules relating to clearing house default management, recovery and wind-down to address the risk of uncovered losses from a clearing participant (''Participant'') default or series of Participant defaults, among other risks. ICC also proposed to adopt two related sets of new default auction procedures: initial default auction procedures and secondary default auction procedures.[3]

I. Summary of Proposed Amendments

The amendments would, among other matters:

(i) Enhance existing tools and establish new tools and procedures (and an order of priority for using such tools and procedures) to manage a Participant default or series of defaults and return to a matched book, specifically:

(A) Initial default auctions, to be conducted in accordance with a defined set of default auction procedures;

(B) if such initial default auctions are not fully successful, conducting a secondary auction of all remaining positions, to be conducted in accordance with a defined set of secondary auction procedures; and

(C) if a secondary auction is unsuccessful, partial tear-up of positions of non-defaulting Participants corresponding to the defaulter's remaining portfolio; (Rules 20–605(d)–(f), 809)

(ii) in connection with the new default management steps described in (i) above, eliminate forced allocation as a default management tool; (Rule 20–605(c))

(iii) in connection with these default management steps, provide the ability to implement reduced gains distributions (a.k.a., variation margin haircutting) following exhaustion of other financial resources for up to five business days; (Rule 808)

(iv) adopt new governance and consultation requirements for the use of these default tools and procedures; (Rule 20–605(l))

(v) clarify in the Rules the distinction between the obligation of a Participant to ''replenish'' its guaranty fund contribution and its obligation to meet additional ''assessments'' that may be levied in respect of a Participant default. Consistent with the existing Rules, a Participant's liability for assessment contributions will remain capped at ''1x'' its guaranty fund contribution in respect of any single default; (Rule 803)

(vi) establish a ''cooling-off period'' triggered by certain Participant defaults that result in guaranty fund depletion, in which case the aggregate liability of Participants for replenishments of the guaranty fund and assessments would be capped at ''3x'' its guaranty fund contribution for all defaults during that period; (Rule 806)

(vii) establish a new process under which a Participant may withdraw from the clearing house, both in the ordinary course of business and during a cooling-off period, and related procedures for unwinding all positions of such a Participant and capping its continuing liability to ICC; (Rule 807)

(viii) move ICC's current ''pro rata'' contribution to the guaranty fund higher in the priority waterfall of default resources; and (Rule 802(b))

(ix) clarify the procedures for full clearing service termination, where that is determined to be appropriate by ICC. (Rule 810)

The proposed amendments are described in more detail in the following sections:

II. Revisions to Default Management Tools and Steps

Rule 20–605, which specifies ICC's remedies upon a Participant default, has been substantially revised, both to implement the additional recovery tools discussed herein and to improve overall clarity. ICC's existing default remedies (as modified as discussed herein), such as initial default auctions, are referred to in the revised rule as ''Standard Default Management Actions''. The additional default management tools being adopted, such as secondary auctions, partial tear-up and reduced gain distributions, are referred to in the revised rule as ''Secondary Default Management Actions''. As discussed herein, additional governance and other requirements apply to Secondary Default Management Actions.

Overall Structure of Revised Rule 20–605

Rule 20–605 has been restructured to reflect the distinction between Standard Default Management Actions and Secondary Default Management Actions referred to in the preceding paragraph, and to make certain drafting improvements. In the revised rule:

- Rules 20–605(a) and (b) set out the definition of Default and ICC's ability to declare a Participant in Default, which are substantially the same as in the current Rule.
- Rule 20–605(c) specifies the Defaulting Participant's resources that may be used to cover losses (and the order in which those resources may be applied). In substance, it is consistent with the current Rule.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Although the auction procedures will not be published, ICC will make such procedures available to all Participants, subject to existing confidentiality arrangements between ICC and Participants and the confidentiality provisions set forth in the auction procedures. ICC will also make such procedures available to customers of Participants at the request of such customers (and/or permit Participants to do so), subject to confidentiality arrangements.

• Rule 20–605(d) and (e) provide for Standard Default Management Actions, which are largely consistent with the current Rules but include the improvements to initial default auctions discussed below. Rule 20–605(e) also sets out the ability of ICC to defer the use of Standard Default Management Actions (which is largely consistent with the current Rules) or bypass the use of Standard Default Management Actions and proceed to the use of Secondary Default Management Actions.

• Rule 20–605(f) provides for the Secondary Default Management Actions, as discussed below.

• Rule 20–605(l) has been revised to impose enhanced governance procedures for Secondary Default Management Actions and certain other matters, as discussed below. As revised, Rule 20–605(l) specifies certain default management actions to be taken in consultation with the CDS Default Committee and other default management actions to be taken in consultation with the Risk Committee. The rule also requires that certain default management actions be taken by the ICC Board (and provides that such decisions may not be delegated to an officer).

Initial Default Auctions

As revised, Rule 20–605(d)(v) provides for ICC to run one or more default auctions with respect to the remaining portfolio of the defaulting Participant.

Default auctions are to be conducted in accordance with a new defined set of default auction procedures. Under those procedures, ICC may break the portfolio into one or more lots, each of which will be auctioned separately. Participants will have an obligation to bid for each lot in a minimum amount determined by ICC. (A Participant may transfer or outsource its minimum bid requirement to an affiliated Participant, and similarly a Participant may aggregate its own minimum bid requirement with that of its affiliated Participant.) A minimum bid requirement will not apply where the bid would be in breach of applicable law or the Rules (including Rules relating to entry into self-referencing credit default swaps) or where the relevant lot includes sovereign credit default swaps referencing the country in which the Participant (or its ultimate parent) is domiciled.

Non-Participants may bid indirectly through a Participant. In addition, Non-Participants have the option to bid directly in the auction, provided that (i) a Participant has confirmed that it will clear any resulting transactions of the Non-Participant; (ii) the Non-Participant makes a minimum deposit of US$10 million which may be applied by ICC in the same manner as Participants' guaranty fund contributions (*e.g.,* subject to ''juniorization'' as described below); and (iii) the Non-Participant has entered into an agreement with ICC pursuant to which it agrees to the auction terms and confidentiality requirement in the same manner as they apply to Participants. If an auction for any lot or lots fails, as determined in accordance with the default auction procedures, ICC may determine to have a subsequent default auction or auctions under these auction procedures.

The auction for each lot will be conducted as a modified Dutch auction, with all winning bidders paying or receiving the auction clearing price.

Under Rule 802(b)(i)(B), all available default resources (both pre-funded guaranty fund contributions of Participant, assessment contributions of Participant and ICC contributions to the guaranty fund) may be used to pay the cost of an initial default auction. Guaranty fund and assessment contributions of non-defaulting Participants are subject to ''juniorization'' and will be applied using a defined default auction priority set out in the default auction procedures based on the competitiveness of their bids. A portion of each Participant's guaranty fund contributions is allocated to the auction cost of each lot, and is further divided into three tranches. The lowest (and first-used) tranche consists of contributions of Participants that failed to bid in the required amount in the relevant auction. The second, or subordinate, tranche includes contributions of Participants whose bids were less competitive than a defined threshold based on the auction clearing price. The final, or senior, tranche includes contributions of Participants whose bids were more competitive than a second threshold. (For Participants who bid in the band between the two thresholds, their contributions will be allocated between the senior and subordinate tranches based on a formula.) Thus, contributions of Participants who fail to bid will be used before those who bid, and contributions of those who bid uncompetitively will be used before those who bid competitively. A parallel juniorization approach applies to the use of assessment contributions. With this design, ICC believes that the default auction procedures give Participants a strong incentive to bid competitively, with the goal of reaching an efficient auction clearing price that permits the clearing house to close out the defaulter's portfolio within the resources of the clearing house.

Secondary Auction

If the initial default auctions are not fully successful in closing out the defaulting Participant's portfolio, ICC will proceed to use Secondary Default Management Actions with respect to the remaining portfolio. The first such step would be to conduct a secondary auction with respect to the defaulter's remaining portfolio under Rule 20–605(f)(ii). (As discussed below, ICC may in certain circumstances invoke reduced gains distributions in connection with such an auction.)

The secondary auction will be conducted pursuant to a separate set of secondary auction procedures. The secondary auction will also use a modified Dutch auction format, with all winning bidders paying or receiving the auction clearing price. ICC will endeavor to auction off the remaining portfolio in a single lot, although it may break the portfolio into separate lots if certain Participants are not able to bid on particular contracts or it otherwise determines that doing so would facilitate the auction process. A secondary auction for a lot will be deemed successful if it results in a price for the lot that is within ICC's remaining default resources, which will be allocated to each lot for this purpose based on the initial margin requirements for the lot. The secondary auction procedures contemplate that non-Participants may bid directly in the secondary auction (without need for a minimum deposit, but provided that a Participant has confirmed that it will clear any resulting transactions of the Non-Participant), or may bid through a Participant.

Under Rule 802(b)(i)(B), in the case of a secondary auction, ICC will apply all remaining clearing house default resources. Guaranty fund and assessment contributions of non-defaulting Participants, to the extent remaining, will be subject to ''juniorization'' in a secondary auction, similar to that described above for initial default auctions, in accordance with the secondary auction priority set forth in the secondary auction procedures.

If a secondary auction is unsuccessful for any lot, ICC may run another secondary auction for that lot on a subsequent business day. ICC may repeat this process as necessary. However, pursuant to Rule 808(e), if ICC has invoked reduced gains distributions, the last attempt at a secondary auction (if needed) will occur on the last day of the five-business-day reduced gain

distribution period. On that last day, the secondary auction for each lot will be successful if it results in a price that is within the default resources for such lot. ICC may also determine, for a secondary auction on that last day, that an auction for a lot will be partially filled. With respect to any lot that is not successfully auctioned, in whole or in part, ICC will proceed to partial tear-up under Rules 808(e) and 809, as described below.

Partial Tear-Up

If the secondary auction does not result in the close out of all of the defaulter's remaining portfolio within the clearing house's remaining resources, then ICC will proceed to a partial tear-up of the remaining positions under Rules 20–605(f)(iii) and 809. Under Rule 809(a), ICC will be permitted to use partial tear-up only after it has attempted one or more initial default or secondary auctions. Pursuant to revised Rule 20–605(l)(iv) and (v), ICC must consult with the Risk Committee before invoking partial tear-up, and any decision to use partial tear-up must be made by the ICC Board. Rule 809(b) specifies certain notice requirements in connection with any partial tear-up.

Pursuant to Rule 809(c), in a partial tear-up, ICC will terminate positions of non-defaulting Participants that exactly offset those in the defaulting Participant's remaining portfolio (*i.e.,* positions in the identical contracts and in the same aggregate notional amount) (''Tear-Up Positions''). ICC will terminate Tear-Up Positions across both the house and customer origin accounts of all non-defaulting Participants that have such positions, on a pro rata basis. Within the customer origin account of a non-defaulting Participant, Tear-Up Positions of customers will be terminated on a pro rata basis. Where ICC has entered into hedging transactions relating to the defaulter's positions that will not themselves be subject to tear-up, ICC may offer to assign or transfer those transactions to Participants with related Tear-Up Positions.

ICC will determine a termination price for all Tear-Up Positions, in accordance with Rule 809(e) based on the last established end-of-day mark-to-market settlement price. Under Rules 809(b)(iv) and (d), tear-up will occur contemporaneously with the determination of such price (at 5 p.m., New York time). Because the termination price will equal the current mark-to-market value as determined pursuant to the ICC end-of-day settlement price process (and will be satisfied by application of mark-to-market margin posted (or that would have been posted but for reduced gain distribution) under Rule 809(d)), no additional amount will be owed by ICC in connection with the tear-up.

Reduced Gains Distributions

As an additional Secondary Default Management Action, where ICC has exhausted its remaining available default resources (including assessment contributions), ICC may invoke reduced gain distributions under Rules 20–605(f)(i) and 808 for up to five consecutive business days. Reduced gain distribution will allow ICC to reduce payment of variation, or mark-to-market, gains that would otherwise be owed to Participants, as it attempts a secondary auction or conducts a partial tear-up. Rule 808(b) specified certain conditions to the commencement of reduced gain distribution, including that ICC has exhausted all other available default resources and has determined that reduced gain distribution is appropriate in connection with a secondary auction or partial tear-up. Pursuant to revised Rule 20–605(l)(iv) and (v), ICC must consult with the Risk Committee before using reduced gain distribution, and any decision to use reduced gain distribution must be made by the ICC Board. Rule 808(c) specifies certain notice requirements in connection with reduced gain distributions.[4]

Pursuant to Rule 808(d), at the end of each day in the five business day period, ICC must determine whether it expects that there will be favorable conditions for completing a successful secondary auction. If so, ICC may continue the reduced gain distribution for that day.

Under Rule 808(e), if ICC conducts a successful secondary auction on any day, any reduced gain distribution period that is in effect will end. If ICC has been unable to conduct a successful secondary auction by the end of the five business day reduced gain distribution period, ICC will proceed to conduct a partial tear-up under Rule 809 as of the close of business on such fifth business day.

Pursuant to Rule 808(f) and (h), if reduced gain distribution applies on any day, the net amount owed on such day to each Participant that is deemed to be a ''cash gainer'' in respect of its house or customer origin account (*i.e.,* a Participant that would otherwise be entitled to receive mark-to-market margin or other payments in respect of such account) will be subject to a percentage haircut. Haircuts are determined independently on each day of reduced gain distribution. Haircuts are applied separately for the house and customer origin accounts. Under Rule 808(p), within the customer origin account, haircuts are applied on a gross basis across the different customer portfolios, such that each customer portfolio receives the same haircut percentage. For each day of reduced gain distribution, ICC will notify Participants and the market more generally of the amount of the reduction, through a circular made available in the ordinary course on its Web site and through electronic distribution, promptly following the close of business on such day and completion of the relevant calculations as of the close of business (which is expected to be at approximately 7:30 p.m. New York time), in accordance with Rule 808(c).

Following the conclusion of the closing-out process for a default, ICC will apply any recoveries from the defaulting Participant to make payments to non-defaulting Participants in an amount equal to the aggregate net amount of haircuts made during the period of reduced gain distributions, pursuant to Rule 808(m).

Removal of Forced Allocation as a Default Management Tool

Existing Rule 20–605(c)(vii), which allowed ICC to make a forced allocation of positions in the defaulter's portfolio, has been removed in light of the new default management tools described above.

Governance for Use [sic] Default Management Tools

The proposed amendments add new governance requirements around the ICC's use of the revised default management tools.

Under new Rule 20–605(l)(iii), ICC will consult with its CDS Default Committee with respect to establishing the terms for default auctions and secondary auctions, including defining different lots for default auctions. In the context of an initial auction, ICC will also consult with the CDS Default Committee as to whether to hold additional such auctions and/or to accept a partial fill of any lot in such an auction. Under existing Rule 20–617, CDS Default Committee members consist of experienced trading personnel at Participants that serve on the CDS Default Committee on a rotating basis and who are seconded to ICC to assist with default management. Under revised Rule 20–617(g), and consistent

[4] An error in the description of rule 808(c) was corrected by SEC staff and confirmed by ICC counsel via email on November 15, 2016.

with current practice, seconded committee members are required to act in the best interests of ICE Clear Credit (rather than in the interests of their Participant firm). Members of the CDS Default Committee are expected to work together with, and under the supervision of, the ICC risk department, and are also supported by legal, compliance and other relevant ICC personnel. Ultimate decisions as to matters subject to consultation with the CDS Default Committee will be made by ICC management.

Under new Rule 20–605(l)(iv), ICC will consult with its Risk Committee, to the extent practicable, with respect to key decisions involving Secondary Default Management Actions, including whether to hold a secondary auction, invoke reduced gains distribution, implement a partial tear-up and/or terminate the clearing service. The amendments also establish notice and similar procedures for Risk Committee consultation in this context, and address circumstances in which such consultation is impracticable (in which case ICC may act without prior consultation but must generally consult as soon as is practicable). In particular, under the ICC Code of Business Conduct and Ethics for Committee Members,[5] the Risk Committee is charged with acting in the interests of the clearing house, rather than the interests of individual members (or the Participants they may represent). Consistent with its current practice, the Risk Committee would be provided with detailed, confidential information concerning the proposed actions to be taken. Under Chapter 5 of the Rules and the Charter of the Risk Committee,[6] the committee is to have the resources and authority appropriate to discharge its function. Under the Rules, the role of the Risk Committee is advisory, and accordingly, the final decision with respect to Secondary Default Management Actions (like other actions) will rest with the ICC Board as discussed below. In practice, ICC management and the ICC Board have worked collaboratively with the Risk Committee, and there is no history of the ICC Board acting over the objection of the Risk Committee. As discussed below, Participants and their interests are also significantly represented on the ICC Board.

In addition, new Rule 20–605(l)(v) provides that certain key decisions involving Secondary Default Management Actions must be made by majority vote of the ICC Board (and may not be delegated to an officer). These include whether to hold a secondary auction, invoke reduced gains distribution, implement a partial tear-up and/or terminate the clearing service. Under the existing constitutive documents of the clearing house, including the Board charter and Governance Playbook, a majority of the ICC Board is required to be independent of ICC management. In addition, under the Board charter, four of the eleven members of the Board are designated by the Risk Committee (two of which are independent of Participants and two of which need not be so independent (and thus may be representatives of Participants)).

III. Clarifications of Guaranty Fund Requirements and Uses

Various clarifications and conforming changes have been made to the provisions of Rules 801 and 802, which address the contributions to and uses of the guaranty fund. Provisions in Rules 803 and 804 have also been moved and reorganized. These changes include the following:

- The changes clarify the distinction between the obligation of a Participant to ''replenish'' its guaranty fund contribution (Rule 803(a)) and its obligation to make ''assessment contributions'' (Rule 803(b)). These clarifications do not change the substance of existing requirements. For this purpose, an ''assessment'' provides additional resources beyond funded resources to cover losses from a particular default that has already occurred. By contrast, a ''replenishment'' is designed to restore the required level of the guaranty fund following application thereof, and thus replenishments are to be used to cover future potential defaults.
- Rule 803(b) also permits assessments to be called in anticipation of any charge against the guaranty fund following a default, rather than only after such a charge.
- A parallel distinction has been made with respect to ICC's contribution to the guaranty fund between required replenishments and additional contributions where assessments have been levied on Participants (subject to a similar 1x limit per default (which is $25 million), and an aggregate 3x limit for replenishments and assessments in a cooling-off period (which is $75 million)). (Rule 801(b)).
- ICC's current ''pro rata'' contribution to the guaranty fund has been moved higher in the priority waterfall, such that it will be used prior to the application of guaranty fund contributions of non-defaulting Participants. Similarly, additional ICC contributions to the guaranty fund where assessments have been levied on Participants will be applied before such assessments. (Rule 801(b))
- Rule 801(a) has been revised generally to conform to the revised assessment limitations set forth in the other rules in Chapter 8.
- Rules 802(a) and (c), which address the allocation of recoveries from a defaulting Participant, have been simplified and revised to conform to the other changes in the default waterfall.
- Rule 802(c) has also been revised to state ICC's obligations with respect to seeking recoveries from a defaulting Participant. Specifically, ICC will exercise the same degree of care in enforcement and collection of any claims against the defaulter as it exercises with respect to its own assets that are not subject to allocation to Participants and others.

IV. Cooling-Off Period

New Rule 806 implements the ''cooling-off period'' concept. (Related definitions, including for ''cooling-off period,'' ''cooling-off period trigger event,'' ''cooling-off termination period'' and ''sequential guaranty fund depletion,'' have been included in Rule 102.) A ''cooling-off period'' is triggered by certain calls for assessments or by sequential guaranty fund depletion within a 30 calendar day period. Pursuant to Rule 806(b), liability of Participants for assessments as a result of the default or defaults that triggered the cooling-off period or that occur during the cooling-off period remains capped at ''1x'' the required guaranty fund contribution per default. In addition, the total amount of replenishments and assessment contributions during the cooling-off period cannot exceed three times the required guaranty fund contribution, regardless of the number of defaults during the period. The foregoing caps are based on a Participant's individual guaranty fund contribution immediately prior to the default that triggered the cooling-off period. Under Rule 806(e), Participants may also be required to provide additional initial margin during the period, which will facilitate ICC's ability to continue to satisfy its regulatory minimum financial resources requirements.

[5] An error in the title of ICC Code of Business Conduct and Ethics for Committee Members was corrected by SEC staff and confirmed by ICC counsel via email on November 9, 2016.

[6] An error in the title of Rules and the Charter of the Board of Managers of ICC was corrected by SEC staff and confirmed by ICC counsel via email on November 9, 2016.

V. Participant Withdrawal

New procedures for the withdrawal of Participants are added in revisions to Rule 207 and new Rule 807. These apply both to ordinary course terminations outside of a default scenario and termination during a cooling-off period. Under Rule 807(a), Participants may withdraw from ICC during a cooling-off period by providing an irrevocable notice of withdrawal in the first 10 business days of the period (subject to extension in certain cases if the cooling-off period is extended). Participants may withdraw from ICC at other times by notice to ICC under Rule 207. In either case, Participants must close out all outstanding positions by a specified deadline, generally within 20 to 30 business days following notice of withdrawal. Withdrawal is not effective, pursuant to Rule 807, until the Participant has closed out all outstanding positions and satisfied any related obligations, and a withdrawing Participant remains liable under Rule 807(b) with respect to charges and assessments resulting from defaults that occur before such time. Under Rule 807(f), a Participant that seeks to withdraw other than during the first 10 business days of a cooling-off period may, at the direction of ICC, be required to make a deposit of up to three times its required guaranty fund contribution (including any Specific WWR Guaranty Fund Contribution). Such a deposit would not impose new liabilities on the Participant, but provide assurance that the withdrawing Participant will continue to meet its obligations in respect of defaults and potential defaults before its withdrawal is effective. It thus reduces the potentially destabilizing effect that Participant withdrawal (or a series of Participant withdrawals) could have on the clearing house during a stressed situation. Rule 807(a) also specifies the timing for the return of guaranty fund contributions to a withdrawing Participant. Certain related definitions (including ''termination close-out deadline date'' and ''termination date'') have been added in Rule 102.

VI. Clearing Service Termination

New Rule 810 revises and replaces current Rule 804, and addresses the procedures for full clearing service termination. As under current Rule 804, full termination will occur following an ICC default as provided in Rule 805, and in circumstances where termination is otherwise determined to be appropriate by the ICC Board in consultation with the Risk Committee. In the latter case, pursuant to revised Rule 20–605(l)(iv) and (v), ICC must consult with the Risk Committee before terminating the clearing service, and any decision to do so must be made by the ICC Board.

Rule 810(b) specifies more precisely the time at which termination will occur, which, in the case of an ICC default, will be 5 p.m. New York time on the second business day following the default. In the case of other termination scenarios, termination will occur at the time specified by ICC in the circular, which must be within one business day of the issuance of the circular. Rule 810(c) specifies notice requirements for full termination. Rule 810(d) establishes a procedure for determination of the termination price. ICC will determine a termination price for all positions (based on the last established mark-to-market price, if available, a final price submission process, or certain other specified objective sources). Rule 810(e) clarifies the procedures for determining a net amount owed to or by each Participant (separately for its house and customer accounts) in connection with the termination. Rule 810(e) in particular clarifies the treatment of mark-to-market margin and reduced gain distributions in the calculation of net amounts owed. ICC will use all available default resources and net payments owed by Participants to make net payments owed to Participants, and in the event of a shortfall, available amounts will be applied on a pro rata basis.

VII. Additional Changes

ICC has proposed certain additional changes to the Rules that are generally in the nature of drafting improvements, clarifications and conforming changes. In particular, ICC has revised Rule 102 to include, for clarity, additional cross-references to various terms that are defined in other parts of the Rules. Similarly, updated definitions and cross-references have been added in new Rule 700 for Chapter 7 of the Rules, in Rule 901 for Chapter 9 of the Rules, in new Rule 2100 for Chapter 21 of the Rules, in Rule 2200 for Chapter 22 of the Rules,[7] and in Rule 26E–102 for Chapter 26E of the Rules. Rule 102 has also been revised to add new defined terms that are used in the rule changes discussed above, such as those relating to cooling-off period and the distinction between initial phase default resources (generally available for standard default management actions) and final phase default resources (generally available for secondary default management actions).

Certain other conforming changes have been made throughout the Rules to reflect the new default management tools and provisions discussed above, including in Rules 207, 209 and 502. In Rule 312, ICC has clarified its liability for certain actions in connection with the default management process, and made certain other conforming changes. In Rule 406(g), ICC has clarified its liability for certain investments of customer funds, consistent with Commodity Futures Trading Commission (''CFTC'') requirements. In Rule 601, ICC has clarified that its emergency authority does not override the limitations on Participant liability in Chapter 8 of the Rules, or permit partial tear-up of positions except as otherwise provided in the Rules. Certain other typographical and cross-reference corrections have been made throughout the Rules. Certain incorrect references in the Rules to the title of ''chief executive officer'' have been removed, in light of the fact that the senior ICC officer is titled ''president.''

(b) Statutory Basis

ICC believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act[8] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22,[9] and in particular are consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[10] As discussed herein, the proposed rule changes are principally designed to address the risks posed to ICC by a significant default by one or more Participants, as well as certain other loss events. Although ICC has established the level of its required financial resources in order to cover defaults in extreme but plausible market conditions, consistent with regulatory requirements, ICC nonetheless faces the risk of a loss scenario (however implausible) that exceeds such conditions (as a result of which its financial resources may not be sufficient to cover the loss in full). The proposed rule changes are intended to enhance the ability of ICC to manage the risk of

[7] An error in the citation was corrected by SEC staff and confirmed by ICC counsel via email on November 9, 2016.

[8] 15 U.S.C. 78q–1.

[9] 17 CFR 240.17Ad–22.

[10] 15 U.S.C. 78q–1(b)(3)(F).

such a default. ICC does not propose to change its existing risk methodology or margin framework, which are its initial lines of defense against losses from Participant default. However, as discussed herein, the amendments provide additional default tools and procedures, including initial and secondary auction procedures and partial tear-up, that are designed to permit ICC to restore a matched book and limit its exposure to potential losses from a Participant default in extreme scenarios that may not be able to be addressed by standard risk management and default procedures. The enhanced procedures for full termination also serve as a means of addressing general business risk, operational risk and other risks that may otherwise threaten the viability of the clearing house. Moreover, the amendments clarify the ability of Participants to withdraw from the clearing house (and specify the responsibilities and liabilities of the clearing house and the Participant in such situations.)

In the proposed rule changes, ICC has sought to develop default management tools that permit and incentivize involvement of both Participants and customers of Participants in a default management scenario. For example, the new default auction procedures are designed to incentivize competitive bidding through the possibility of juniorization of guaranty fund and assessment contributions. The auction procedures further contemplate that customers may participate directly in default auctions at their election (subject to making the required clearing deposit), or alternatively may participate through a Participant (without the need for such a deposit). ICE Clear Credit believes that such participation will lead to more effective and efficient auctions, and give customers of Participants the opportunity to protect against the possibility of partial tear-up (to the extent the consequences thereof are adverse to them) and reduced gain distribution through bidding competitively in the auction.

The amendments also more clearly allocate certain losses as among ICC, Participants and their customers. The amendments are designed to plan for a remote and unprecedented, but potentially extreme, type of loss event—a loss from one or more Participant defaults that exhausts funded resources and requires additional recovery or wind-down steps. Such losses will necessarily and adversely affect some or all Participants, customers or other stakeholders. In ICE Clear Credit's view, its current Rules, with the possibility of forced allocation, could force certain risks of loss only on Participants, in a way that is unpredictable and difficult to quantify in advance, and that Participants have strongly stated is undesirable from their perspective. ICE Clear Credit believes that the amendments take a more balanced approach that distributes potential losses more broadly, to both Participants and customers that would otherwise have potential gains. Specifically, in the event of a partial tear-up, all market participants (both Participants and customers) holding the relevant positions would be affected on a pro rata basis. Similarly, losses arising from reduced gain distribution (which would be invoked only following exhaustion of all other resources) would be shared on a pro rata basis by both Participants and customers with gain positions. In the event of a full termination, any shortfall in resources would similarly be shared on a pro rata basis across all Participants and their customers. ICE Clear Credit also believes that the amendments provide greater certainty as to the consequences of default and the resources that would be available to support clearing operations, to allow stakeholders to evaluate more fully the risks and benefits of clearing.

In light of extensive discussions with Participants, customers and others, and the views expressed by industry groups and others, ICE Clear Credit believes that the amendments provide an appropriate and equitable method to allocate the loss from an extreme default scenario to both Participants and their customers on the basis of their positions. ICE Clear Credit further believes that the approach taken will facilitate the ability of the clearing house to fully allocate the loss so that it can continue clearing operations and withstand and/or recover from extreme loss events. The amendments therefore further the prompt and accurate clearance and settlement of cleared transactions. The amendments will also support the stability of the clearing system, as part of the broader financial system, and will promote the protection of market participants from the risk of default by another market participant and the public interest more generally. In light of the importance of clearing houses to the financial markets they serve, the policy in favor of clearing of financial transactions as set out in the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the potential adverse consequences of a clearing house failure for the financial markets, the amendments support the public interest.

In addition to the Act, the amendments are designed to satisfy the requirements of CFTC Rules 39.35 and 39.39 applicable to ICC as a derivatives clearing organization designated as systemically important under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and to be consistent with relevant international standards, including the Principles of Financial Market Infrastructure developed by CPMI–IOSCO.

The amendments will also satisfy the specific relevant requirements of Rule 17Ad–22,[11] as set forth in the following discussion:

Financial Resources. ICC's funded margin and guaranty fund resources are currently designed to be sufficient to meet ICC's financial obligations to clearing members notwithstanding a default by the two clearing members creating the largest combined loss, in extreme but plausible market conditions, consistent with regulatory requirements. ICC does not propose to reduce such funded resources. The amendments are intended to enhance and provide greater certainty as to the additional resources, beyond the funded margin and guaranty fund resources, that will be available to support clearing operations in more extreme Participant default scenarios. ICC also proposes to maintain the current level of its own contributions to default resources, but to move those resources higher in the default waterfall (so that they are used prior to the guaranty fund contributions of non-defaulting Participants) and thus provide additional protection for the contributions of non-defaulting Participants.

As set forth above, the amendments would maintain the existing ''1x'' limitation on assessments per default, and impose a new limitation on guaranty fund replenishments and assessments during a cooling-off period resulting from guaranty fund depletion. The amendments will require that Participants continue to replenish and meet assessment obligations during the cooling-off period, subject to a 3x limit. In addition, in the event the 3x limit is reached, the amended rules allow ICC to call on Participants for additional initial margin in order to ensure that it maintains sufficient resources to comply with applicable minimum regulatory financial resources requirements. In ICC's view, these changes provide an appropriate balance between several competing interests of the clearing house and Participants. Although the amendments may in theory limit the maximum resources available to the

[11] 17 CFR 240.17Ad–22.

clearing house (as compared to the absence of a cap), the changes will provide greater certainty for Participants as to their maximum liability with respect to the guaranty fund in the event of defaults (and thus their maximum amount of mutualized risk), in order to facilitate their own risk management, regulatory and capital considerations. This greater certainty is in turn intended to help stabilize the clearing house during a period of significant stress, including where there are multiple defaults. In particular, a cooling-off period and limit on assessments may reduce the risk of cascading defaults, where the financial demands placed on non-defaulting Participants for repeated assessments or replenishments could cause such Participants to themselves experience financial stress or even default, which could make the default management process more difficult. The cooling-off period thus reduces the potential procyclical effect of requiring additional mutualized guaranty fund contributions in times of stress. The period is designed to give the clearing house time to work out the default without exacerbating these stresses, while also allowing the clearing house and Participants time to assess whether the defaults will be able to be resolved and normal clearing will be able to resume.

In addition, the amendments will ensure that ICC maintains sufficient resources to continue operations in compliance with minimum regulatory financial resources requirements, either through replenishment of the guaranty fund in the normal course, or in an extreme situation where the 3x cap is reached, by providing ICC the ability to call for additional initial margin. ICC recognizes that the ability to call for such additional initial margin, particularly in times of stress, may have a potential procyclical impact and potential liquidity impact on Participants and their customers that is greater than guaranty fund replenishment, because initial margin is not subject to mutualization. As a result, the amount of additional initial margin required may exceed the amount of guaranty fund replenishment that would be required in the absence of the 3X cap. At the same time, ICC believes that these risks are limited to a particular remote loss scenario, and are mitigated by certain factors. ICC expects to limit the additional margin to the amount necessary to maintain minimum regulatory financial resources compliance, which may be less than the amount ICC would otherwise require under its guaranty fund methodology. ICC also expects that over the course of a cooling-off period, aggregate potential stress losses, and thus the need for additional financial resources, will generally decrease. In particular, Participants (and their customers) have the opportunity during the cooling-off period to reduce or rebalance the risk in their own portfolios, and thus mitigate potential stress loss and exposure to initial margin increases. Participants and their customers can also participate in default management (through participation in auctions), which will help them reduce their own risk profile. Greater involvement in default management may enhance competitive bidding, which in turn may reduce the likelihood that the 3X cap will be reached. In addition, and most importantly, additional initial margin posted by Participants is not subject to mutualization and cannot be used to cover defaults of other Participants. As a result, while Participants may be required to post more funds as additional initial margin than in a replenishment of a mutualized guaranty fund, the risk of loss to Participants of those additional margin funds is substantially less than for guaranty fund replenishment. Based on discussions with its Participants, ICC understands that for these reasons Participants prefer the use of additional initial margin in this remote, but potentially highly stressed scenario, notwithstanding the potentially higher procyclical or liquidity effect.

The clearing house has set the length of the cooling-off period at a duration of 30 calendar days, which is intended to be long enough to provide the clearing house and Participants with a measure of stability and predictability as to the use of guaranty fund resources and avoid incentivizing Participants to withdraw from the clearing house following a default. This period is consistent with the timeframe for the normal, periodic recalculation of ICC's guaranty fund under Rule 801 (which is done on a monthly basis), a period that ICC has found appropriately balances stable guaranty fund requirements with the ability to make changes as necessary. ICC also believes, based on its analysis of the OTC derivatives markets and historical default scenarios involving a large OTC market participant, that 30 days has historically been an adequate period for the market to stabilize following a significant default event. (This was, for example, observed in the interest rate swap market following the Lehman insolvency.) ICC similarly believes that in the context of a cooling-off period, 30 calendar days is an appropriate time horizon to seek to stabilize the clearing house, in light of the products cleared by ICC, and reduce stress on non-defaulting Participants (and their customers) as the clearing house conducts its default management. It provides a minimum period for Participants (and their customers) to reduce or rebalance their positions in an orderly manner to facilitate continued clearing operations once the cooling-off period ends. The 30-day cooling-off period will thus help provide stability for the market and predictability for Participants and their customers as they seek to manage their own risks. In ICC's view, this may increase the willingness and ability of Participants and their customers to participate in a default auction and absorb the defaulter's positions through the default management process.

A shorter cooling-off period, in ICC's view, may result in greater potential assessment and replenishment liability for Participants, which in turn may increase the risk of a default (or series of defaults) caused by an inability of Participants to meet such liabilities on a timely basis. A shorter period may also give non-defaulting Participants an incentive to withdraw quickly from the clearing house following a default. That may destabilize the clearing house, make it more difficult to resolve the default and achieve recovery following default, and reduce confidence in the ability of the clearing house to resume non-distressed clearing operations going forward. A longer cooling-off period may thus help stabilize the clearing system during the default management process. On the other hand, a longer cooling-off period may make it more likely that the 3X cap will be reached, which could in turn increase the stress on clearing house resources and make it more likely that ICC would need to call additional margin from Participants in order to meet ICC's regulatory financial resources requirements, which can itself adversely affect Participants. In ICC's view, the 30-day cooling-off period and assessment limits balance the interests of both the clearing house and Participants and in the aggregate enhances the likelihood that the clearing house can withstand a default.

In ICC's view, the amendments are thus consistent with the financial resources requirements of Rule 17Ad–22(b)(2)–(3).[12]

Settlement Process and Reduced Gain Distribution. The amendments contemplate that as a Secondary Default Management Action, in extreme cases,

[12] 17 CFR 240.17Ad–22(b)(2)–(3)

ICC may implement reduced gains distributions for up to five business days where it has exhausted all other financial resources (including assessment contributions). In such case, ICC will continue to collect mark-to-market margin owed to it from all non-defaulting Participants, but will reduce outbound payments of mark-to-market margin owed to Participants to reflect available resources. ICC will calculate the haircut amount on a daily basis for each day of reduced gain distribution, without consideration of reductions on prior days. As a result, settlement on any day of reduced gain distributions will be final, as ICC does not have any ability to reverse or unwind the settlement. As a result, in ICC's view, the amendments are consistent with the requirements of requirements of Rule 17Ad–22(d)(5), (12) and (15) [13] as to the finality and accuracy of its daily settlement process.

Default Procedures. The amendments clarify and augment the Rules and procedures relating to default management, with the goal of enhancing the ability of the clearing house to withstand extreme default events. The amendments more clearly distinguish between standard default management events, largely covered by its existing default rules and procedures, and more extreme default management scenarios, for which recovery tools may be appropriate. The amendments include a new set of initial auction procedures, designed to facilitate liquidation of the defaulter's portfolio through a multi-lot modified Dutch auction. The auction procedures require participation of all Participants (unless outsourced to another Participant in accordance with the Rules), and permit direct participation in the auction by customers as well as Participants. The procedures also provide incentives for competitive bidding through juniorization of guaranty fund and assessment contributions, as discussed above. The amendments further include a set of secondary auction procedures, intended to provide for an effective final auction of the entire remaining portfolio, prior to the exercise of recovery tools such as tear-up.

Following extensive consultation with Participants, ICE Clear Credit is proposing to remove the existing tool of forced allocation, which may result in unpredictable and unquantifiable liability for Participants. Instead, ICE Clear Credit will have the option to invoke a partial tear-up of positions to restore a matched book in the event that it is unable to auction the defaulter's remaining portfolio. Partial tear-up, if used, will occur at the most recent mark-to-market settlement price determined by ICC, contemporaneously with such determination. As a result, partial tear-up will not result in additional loss to Participants as compared to the most recent mark to market settlement (and if reduced gain distribution is invoked, partial tear-up will not entail additional loss beyond that resulting from such reduced gain distribution). ICE Clear Credit believes that this revised set of tools will maximize the clearing house's ability to efficiently, fairly and safely manage extreme default events. The amendments further provide for the allocation of losses that exceed funded resources, through assessments and replenishments to the guaranty fund, as described herein, and the use of reduced gains distributions when necessary, following the exhaustion of all other resources. The amendments thus are designed to permit ICC to fully allocate losses arising from default by one or more Participants, with the goal of permitting the clearing house to resume normal operations.

As a result, in ICE Clear Credit's view, the amendments will allow it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of clearing member insolvencies or defaults, in accordance with Rule 17Ad–22(d)(11).[14]

Operational Resources. ICC believes that its operational systems and capabilities are sufficient to support the proposed rule changes and new default management tools that would be implemented under those amendments. ICC contemplates testing of the use of the new tools and procedures as part of its regular default management exercises, in order to identify and manage any related operational risks. ICC has developed various automated systems relating to the default management process, and has done significant preparatory work to incorporate the new recovery tools and procedures in those systems. Once the rule amendments are effective, ICC will complete the incorporation of those tools into its systems, and test such systems as part of its regular system testing process. The results of such testing will be shared with appropriate ICC risk and governance committees and regulators, consistent with the treatment of the results of other default management testing. These arrangements will address relevant sources of operational risk in the default management process and are designed to minimize such risks, within the meaning of Rule 17Ad–22(d)(4).[15]

Well-Founded Legal Framework. Rule 17Ad–22(d)(1) requires that a clearing agency have rules and policies reasonably designed to provide a well-founded, transparent and enforceable legal framework for each aspect of its activities in all relevant jurisdictions. ICC believes that the amendments will provide a clearer and more transparent set of default management procedures for addressing extreme loss events, and thus provide greater certainty to the clearing house, Participants and other market participants as to the various tools available to the clearing house and the potential liabilities of Participants and others in such events. ICC further believes that the amendments will permit the clearing house to conduct an orderly recovery or, if necessary, wind-down process, in accordance with the requirements of applicable regulations. ICC has in addition considered and obtained legal advice, as appropriate, as to the enforceability of the amendments. As a result, ICC believes the amendments are consistent with the requirements of Rule 17Ad–22(d)(1).

Governance Arrangements. Rule 17Ad–22(d)(8) requires that a clearing agency have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures. ICE Clear Credit believes the amendments discussed herein satisfy these requirements. The amendments are designed to address extreme loss scenarios resulting from Participant default, and provide an orderly means for recovery or wind-down of clearing operations if necessary. The amendments also clarify the procedures for clearing service termination, which is designed to address other extreme loss scenarios that may necessitate wind-down of operations, to provide greater certainty as to the circumstances under which such termination may occur and the timing and price of any such termination, among other matters. The amendments set out in detail the responsibilities of ICE Clear Credit management, the ICE Clear Credit Board, the ICC Risk Committee (consisting of representatives of Participants) and the ICC CDS Default Committee (consisting of trading personnel seconded from Participants to assist with default management) for key

[13] 17 CFR 240.17Ad–22(d)(5), (12) and (15).

[14] 17 CFR 240.17Ad–22(d)(11).

[15] 17 CFR 240.17Ad–22(d)(4).

decisions relating to the use of recovery and wind-down tools. As discussed above, the revised Rules build on the existing procedures (and historical practice) for consultation with the Risk Committee and CDS Default Committee, and provide adequate resources for those committees to perform their functions. They also reflect the collaborative relationship between the Board and Risk Committee, and the independence of the Board and the significant participation of Participants on the Board. In taking decisions concerning these matters, the Rules, the ICC mission statement, and the relevant governance committee charters will require the Board to take into consideration both the interests of Participants, customers and other stakeholders and the broader goal of providing safe and sound central counterparty services to reduce systemic risk in an efficient and compliant manner, consistent with the requirements of the Act and Rule 17Ad–22(d)(8). These governance procedures have been tailored to provide for meaningful consultation with relevant stakeholders while preserving the ability of the clearing house to act decisively in the exigent and likely unpredictable circumstances of a major Participant default or defaults or other significant loss events.

As noted above, key decisions involving the use of recovery or wind-down tools (including the use of partial tear-up, reduced gain distribution or full clearing service termination) are subject to additional governance requirements that require consultation with the Risk Committee and further require that decisions must be made by the Board (and cannot be delegated to an officer). A majority of the members of the Board are independent of ICE management and the ICE parent. The interests of Participants are clearly taken into consideration, through both the recommendations of the Risk Committee and the participation of Participant representatives on the Board itself. ICC regularly also takes into account the feedback of customers of Participants, both through its buy-side advisory committee and otherwise. Although ICC does not provide for direct customer participation in governance (unlike in the case of Participants), ICC believes that approach is appropriate in light of the particular risks faced by Participants (in light of their financial responsibilities to the clearing house) and the role Participants are required to play in the default management process.

For the foregoing reasons, ICE Clear Credit believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act [16] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22.[17]

(B) Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The amendments will apply uniformly to all Participants (and customers of Participants). ICC does not anticipate that the amendments would affect the day-to-day operation of the clearing house under normal circumstances, or even in typical default management scenarios. ICC is not proposing to alter the standards or requirements for becoming or remaining a Participant, or otherwise using the clearing services it provides. ICC also does not propose to change its methodology for calculation of margin or guaranty fund contributions. The amendments are intended to address instead the risk of extreme loss events, and provide the clearing house additional tools and resources to withstand and/or recover from extreme loss events, so that it can restore a matched book, fully allocate any losses, and resume normal clearing operations. The amendments are consistent with requirements for clearing organizations to implement such procedures under applicable law and regulation, and relevant international standards. As a result, ICC does not believe the amendments will adversely affect the ability of Participants or other market participants to continue to clear CDS contracts. ICC also does not believe the enhancements will limit the availability of clearing in CDS products for Participants or their customers or otherwise limit market participants' choices for selecting clearing services in CDS.

In the case of an extreme default scenario, as discussed herein, the proposed rules and default management procedures may impose certain costs and losses on Participants or their customers, as well as ICC. ICC has sought to appropriately balance the allocation of such costs and losses, with appropriate techniques (such as competitive auctions) through which Participants and customers can mitigate the risks of such losses. The amendments also remove the tool of forced allocation, which potentially forced Participants to face uncertain and unquantifiable liability in certain default scenarios. The amendments contain features such as cooling-off periods, that provide appropriate and transparent limits on the potential liability faced by Participants. As a result, in ICC's view, while the proposed amendments may impose certain costs and losses on market participants, that allocation is appropriate in light of the default management goals of the clearing house, the goals of promoting orderly clearing house recovery, and the broader public interest in the strengthening of the clearing system to withstand significant default events. As a result, ICC does not believe that the proposed rule changes impose any burden on competition that is not appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule changes have been discussed at length with Participants (individually and as a group). The changes have been developed over the course of several years, and throughout that time ICC has regularly consulted with Participants on both the overall design and the detailed drafting of the amendments. Several aspects of the amendments reflect specific requests of Participants and concerns identified by Participants, as discussed above, including the removal of forced allocation, introduction of a cooling-off period and establishment of aggregate limitations on assessments and replenishments. The introduction of partial tear-up and reduced gain distributions as recovery tools have also been discussed in detail with Participants, and have been drafted to take into account and suggestions issues raised by Participants, including to define the circumstances in which those tools may be used and to limit the adverse impact of such tools on netting, regulatory capital and other matters. Certain Participants have expressed concern in particular with the potential use of reduced gain distribution as a recovery tool. While ICC believes reduced gain distribution is an important tool for ensuring its ability to fully allocate losses, ICC has, in light of such concerns, limited the use of reduced gain distribution to scenarios in which all other financial resources of the clearing house have been exhausted. ICC has also consulted with Participants on the details of the initial and secondary auction procedures, and has taken into account comments and suggestions concerning such matters as minimum bid requirements, use of a

[16] 15 U.S.C. 78q–1.

[17] 17 CFR 240.17Ad–22.

Dutch versus other auction methodologies, degree and triggers for juniorization and participation by customers. Certain of the proposed governance arrangements in the amendments also reflect feedback from Participants, including with respect to the role of Risk Committee in major decisions. Throughout the process, ICC has regularly shared drafts of the amendments with Participants, and sought (and received) comment from Participants and Participants' internal and external counsel on such drafts, which ICC has taken into consideration in the drafting of the amendments.

ICC has discussed the amendments individually with members of its buy-side advisory committee, which consists of customers of Participants. ICC also considered the views of industry groups representing customers of Participants, both through discussions with members of such groups and through the public statements and positions of such groups. Certain buy-side customers have expressed concern with aspects of the amendments, particularly the application of partial tear-up and reduced gain distributions to customer positions. As discussed above, ICC believes the use of these recovery tools, for customer as well as proprietary positions of Participants, reflects an appropriate balancing of the legitimate interests of the clearing house, Participants and customers in extreme default scenarios. ICC also believes that the risks of such recovery tools are mitigated by the expanded opportunity for customers to participate, either directly or indirectly, in default auctions, as noted above. Other buy-side customers have expressed concern with the potential use of reduced gain distribution before the exhaustion of all other potential clearing house resources. As discussed above, in light of such concerns, ICC has limited the use of reduced gain distribution to scenarios where all other financial resources of the clearing house have been exhausted. Certain customers have also suggested that the clearing house increase the amount of its own contribution to the guaranty fund, and place such contribution higher in the priority waterfall of default resources. As discussed above, ICC has increased the priority of its contributions in the waterfall, to a position prior to the guaranty fund contributions of non-defaulting Participants (although ICC has not proposed to change the aggregate amount of its contribution).

ICC will notify the Commission of any written comments on the proposed rule changes received by ICC.

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–ICC–2016–013 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–ICC–2016–013. 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. [sic] Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2016–013 and should be submitted on or before December 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2016–28032 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension:

Rule 15c3–5, SEC File No. 270–601, OMB Control No. 3235–0673

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15c3–5 (17 CFR 240.15c3–5) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

Rule 15c3–5 under the Exchange Act requires brokers or dealers with access to trading directly on an exchange or alternative trading system (''ATS''), including those providing sponsored or direct market access to customers or other persons, to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

The rule requires brokers or dealers to establish, document, and maintain certain risk management controls and supervisory procedures as well as regularly review such controls and procedures, and document the review, and remediate issues discovered to

[18] 17 CFR 200.30–3(a)(12).

assure overall effectiveness of such controls and procedures. Each such broker or dealer is required to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act. Such regular review is required to be conducted in accordance with written procedures and is required to be documented. The broker or dealer is required to preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act, and Rule 17a–4(b) under the Exchange Act, respectively.

In addition, the Chief Executive Officer (or equivalent officer) is required to certify annually that the broker or dealer's risk management controls and supervisory procedures comply with the rule, and that the broker-dealer conducted such review. Such certifications are required to be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act. Compliance with Rule 15c3–5 is mandatory.

Respondents consist of broker-dealers with access to trading directly on an exchange or ATS. The Commission estimates that there are currently 640 respondents. To comply with Rule 15c3–5, these respondents will spend a total of approximately 102,400 hours per year (160 hours per broker-dealer × 640 broker-dealers = 102,400 hours). At an average internal cost per burden hour of approximately $339.09, the resultant total related internal cost of compliance for these respondents is $34,722,560 per year (102,400 burden hours multiplied by approximately $339.09/hour). In addition, for hardware and software expenses, the Commission estimates that the average annual external cost would be approximately $20,500 per broker-dealer, or $13,120,000 in the aggregate ($20,500 per broker-dealer × 640 brokers and dealers = $13,120,000).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: November 16, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–28028 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 201 and Rule 200(g) of Regulation SHO, SEC File No. 270–606, OMB Control No. 3235–0670.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 201 (17 CFR 242.201) and Rule 200(g) (17 CFR 242.200(g)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 201 is a short sale-related circuit breaker rule that, if triggered, imposes a restriction on the prices at which securities may be sold short. Rule 200(g) provides that a broker-dealer may mark certain qualifying sell orders ''short exempt.'' The information collected under Rule 201's written policies and procedures requirement applicable to trading centers, the written policies and procedures requirement of the broker-dealer provision of Rule 201(c), the written policies and procedures requirement of the riskless principal provision of Rule 201(d)(6), and the ''short exempt'' marking requirement of Rule 200(g) enable the Commission and self-regulatory organizations (''SROs'') to examine and monitor for compliance with the requirements of Rule 201 and Rule 200(g).

In addition, the information collected under Rule 201's written policies and procedures requirement applicable to trading centers helps to ensure that trading centers do not execute or display any impermissibly priced short sale orders, unless an order is marked ''short exempt,'' in accordance with the rule's requirements. Similarly, the information collected under the written policies and procedures requirement of the broker-dealer provision of Rule 201(c) and the riskless principal provision of Rule 201(d)(6) helps to ensure that broker-dealers comply with the requirements of these provisions. The information collected pursuant to the ''short exempt'' marking requirement of Rule 200(g) also provides an indication to a trading center of when it must execute or display a short sale order without regard to whether the short sale order is at a price that is less than or equal to the current national best bid.

It is estimated that SRO and non-SRO respondents registered with the Commission and subject to the collection of information requirements of Rule 201 and Rule 200(g) incur an aggregate annual burden of 2,908,309 hours to comply with the rules and an aggregate annual external cost of $120,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 16, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–28027 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79326; File No. SR–Phlx–2016–113]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Limit Order Protection

November 16, 2016.

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 November 15, 2016, NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Limit Order Protection or ''LOP'' for members accessing PSX and adding rule text related to a collar applicable to Primary Pegging and Market Pegging Orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently adopted a new mechanism to protect against erroneous Limit Orders which are entered into PSX at Rule 3307(f).[3] This mechanism addresses risks to market participants of human error in entering Limit Orders at unintended prices. Specifically, LOP prevents certain Limit Orders from executing or being placed on the Order Book at prices outside pre-set standard limits. The System rejects those Limit Orders, rather than executing them automatically. LOP rejects Limit Orders back to the member when the order exceeds certain defined logic. Specifically, LOP prevents certain Limit Orders at prices outside of pre-set standard limits (''LOP Limit'') from being accepted by the System.

Modifications of Orders

In its adoptive filing, the Exchange noted that LOP shall apply to all Quotes and Orders, including any modified Orders.[4] At this time, the Exchange proposes to remove ''including any modified Orders'' from the rule text at rule 3307(f)(i). The Exchange proposes to amend this language because it is misleading and may cause confusion. The Exchange proposes to state that LOP shall apply to all Quotes and Orders, including Quotes and Orders that have been modified, where the modification results in a new timestamp and priority.[5] Any Order that is modified within the System, but does not lose priority, for example an Order that was decremented, will not be subject to LOP after it was modified because the system does not cancel decremented orders from the Order Book. If an Order is cancelled either by the member or by the system and a new Order entered into the System, the new Order would be subject to LOP. For example, if the price of an Order is modified, the system will cancel the Order and the modified Order would receive a new timestamp and priority and this Order would be subject to LOP.

Exceptions to LOP

The Exchange also noted in its adoptive filing that LOP would not apply to Market Orders, Market Maker Peg Orders[6] or Intermarket Sweep Orders (ISO).[7] The Exchange proposes to modify this language to specifically state that LOP would not apply to Orders with Market and Primary Pegging.[8]

There are three types of Pegging Orders: Primary Pegging, Market Pegging and Midpoint Pegging. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO; provided, however, that if PSX is the sole market center at the Best Bid or Best Offer (as applicable), then the price of any Displayed Order with Primary Pegging (as defined below) will be set with reference to the highest bid or lowest offer disseminated by a market center other than PSX. An Order with a Pegging Order Attribute may be referred to as a ''Pegged Order.''[9] For purposes of this Rule 3301B, the price to which an Order is pegged will be referred to as the Inside Quotation, the Inside Bid, or the Inside Offer, as appropriate. There are three varieties of Pegging:

- Primary Pegging means Pegging with reference to the Inside Quotation on the same side of the market. For example, if the Inside Bid was $11, an Order to buy with Primary Pegging would be priced at $11.
- Market Pegging means Pegging with reference to the Inside Quotation on the opposite side of the market. For example, if the Inside Offer was $11.06, an Order to buy with Market Pegging would be priced at $11.06.
- Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the ''Midpoint''). Thus, if the Inside Bid was $11 and the Inside Offer was $11.06, an Order with Midpoint Pegging would be priced at $11.03.

[3] *See* Securities Exchange Act Release No. 78246 [sic] (August 24, 2016), 81 FR 59672 (August 30, 2016) (SR–Phlx–2016–58).

[4] If an Order is modified, LOP will review the order anew and, if LOP is triggered, such modification will not take effect and the original order will be rejected.

[5] *See* Rule 4756 (Entry and Display of Quotes and Orders) at (a)(3).

[6] A ''Market Maker Peg Order'' is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Rule 3213(a)(2). The displayed price of the Market Maker Peg Order is set with reference to a ''Reference Price'' in order to keep the displayed price of the Market Maker Peg Order within a bounded price range. A Market Maker Peg Order may be entered through RASH or FIX only. A Market Maker Peg Order must be entered with a limit price beyond which the Order may not be priced. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer) (including PSX), or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (*e.g.,* dividends or stock splits) in the security. *See* PSX Rule 3301A(b)(5)(A).

[7] An Intermarket Sweep or ISO Order, which is an Order that is immediately executable within PSX against Orders against which they are marketable, is not subject to LOP. *See* PSX Rule 3401(g).

[8] Orders with Market and Primary Pegging available through RASH and FIX only.

[9] PSX Rule 3301B(d).

An Order with Midpoint Pegging is not displayed. An Order with Midpoint Pegging may be executed in sub-pennies if necessary to obtain a midpoint price.

Midpoint Pegging will be the only Pegging Order subject to LOP, provided it has a limit price. An Order with Pegging may specify a limit price beyond which the Order may not be executed; provided, however, that if an Order has been assigned a Pegging Order Attribute and a Discretion Order [10] Attribute, the Order may execute at any price within the discretionary price range, even if beyond the limit price specified with respect to the Pegging Order Attribute. A Midpoint Pegging Order may have a discretion attribute. A Midpoint Pegging Order with a discretion price would not be subject to LOP. The Exchange notes that a Midpoint Pegging Order, similar to a Primary or Market Pegging Order, as explained below, may result is [sic] an aggressive or passive price. As a result, the LOP may remove orders that were intended to be more aggressive or passive due to the discretionary attribute. For this reason, the Exchange will not subject a Midpoint Pegging Order with a discretion price to LOP.

In addition, an Order with Primary Pegging or Market Pegging may specify an Offset Amount,[11] such that the price of the Order will vary from the Inside Quotation by the selected Offset Amount. The Offset Amount may be either aggressive or passive. Thus, for example, if a Participant entered an Order to buy with Primary Pegging and a passive Offset Amount of $0.05 and the Inside Bid was $11, the Order would be priced at $10.95. If the Participant selected an aggressive Offset Amount of $0.02, however, the Order would be priced at $11.02. An Order with Primary Pegging and an Offset Amount will not be Displayed, unless the Order is Attributable. The Exchange notes that both Market and Primary Pegging may impact the market by effecting the bid or offer.

The Exchange is not applying LOP to orders with Market or Primary Pegging because it may result in removing orders that were intended to be more aggressive or to set the bid or offer on the market due to the order attributes noted above. These Pegging Orders are also subject to a collar, which is explained in this rule change.

In contrast, an Order with Midpoint Pegging will only be at the midpoint and not have the same impact as the other two types of orders and therefore subjecting such an order to LOP does not impact the potential of the order since by definition it is set to the midpoint. An Order with Midpoint Pegging will not be displayed and is not subject to a collar.

An Order with Market Pegging and no Offset behaves as a ''market order'' with respect to any liquidity on the PSX Book at the Inside Quotation on the opposite side of the market because it is immediately executable at that price. If, at the time of entry, there is no price to which a Pegged Order can be pegged, the Order will be rejected; provided, however, that a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, will be accepted at its limit price. In the case of an Order with Midpoint Pegging, if the Inside Bid and Inside Offer are locked, the Order will be priced at the locking price, if the Inside Bid and Inside Offer are crossed, the Order will nevertheless be priced at the midpoint between the Inside Bid and Inside Offer, and if there is no Inside Bid and/or Inside Offer, the Order will be rejected. However, even if the Inside Bid and Inside Offer are locked or crossed, an Order with Midpoint Pegging that locked or crossed an Order on the PSX Book would execute (provided, however, that a Midpoint Peg Post-Only Order would execute or post as described in Rule 3301B(d). It is important to note that only to the extent that a Midpoint Pegging Order has a limit price that the Order would be subject to LOP, unless the Midpoint Pegging Order also has a discretion attribute. If no limit price is specified, the Midpoint Pegging Order would not be subject to LOP.

LOP will be operational each trading day, except during trading halts and pauses. Members will continue to be subject to certain parameters when submitting Limit Orders into the Order Book. LOP will not apply in the event that there is no established LOP Reference Price.[12] The LOP Reference Price shall be the current National Best Bid or Best Offer (NBBO), the bid for sell orders and the offer for buy orders.[13] LOP is will be applicable on all protocols.[14] The LOP feature will be mandatory for all PSX members.

Implementation of LOP

The Exchange indicated in its adoptive rule change that it would implement this rule within ninety (90) days of the approval of the proposed rule change.[15] At this time, the Exchange proposes to delay this implementation an additional sixty (60) days from the original timeframe in order to implement the LOP with the changes proposed herein. The Exchange will issue an Equities Trader Alert in advance to inform market participants of such implementation date.

Pegging Order Collar

In 2009, the Exchange adopted a collar for certain Unpriced Orders.[16] At that time, the Exchange defined an Unpriced Order as any order type permitted by the System to buy or sell shares of a security at the national best bid (best offer) (''NBBO'') at the time when the order reaches the System. Any portion of an Unpriced Order that would execute on PSX at a price more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.

This rule related to the collar was inadvertently removed from the Exchange's rules.[17] At this time, the Exchange proposes to amend the PSX rules to add the collar into the rules once again.

The purpose of the collar is to protect market participants by reducing the risk that Primary and Market Pegging Orders will execute at prices that are significantly worse than the national

[10] Discretion is an Order Attribute under which an Order has a non-displayed discretionary price range within which the entering Participant is willing to trade; such an Order may be referred to as a ''Discretionary Order.'' *See* PSX Rule 3301B(g).

[11] An offset is not supported for a Midpoint Pegging Order.

[12] For example, if there is a one-sided quote or if the NBB, when used as the LOP Reference Price, is equal to or less than $0.50.

[13] The Exchange will not accept incoming Limit Orders that exceed the LOP Reference Threshold. Limit Orders will not be accepted if the price of the Limit Order is greater than the LOP Reference Threshold for a buy Limit Order. Limit Orders will not be accepted if the price of the Limit Order is less than the LOP Reference Threshold for a sell Limit Order. The LOP Reference Threshold for buy orders will be the LOP Reference Price (offer) plus the applicable percentage specified in the LOP Limit. The LOP Reference Threshold for sell orders will be the LOP Reference Price (bid) minus the applicable percentage specified in the LOP Limit. The LOP Limit will be the greater of 10% of the LOP Reference Price or $0.50 for all securities across all trading sessions. The LOP Reference Price will be the current National Best Bid or Best Offer (NBBO), the bid for sell orders and the offer for buy orders.

[14] PSX maintains several communications protocols for members to use in entering Orders and sending other messages to PSX, such as: OUCH, RASH, FLITE, and FIX.

[15] *See* note 3 above.

[16] *See* Securities Exchange Act Release No. 63051 (October 6, 2010), 75 FR 63240 (October 14, 2010) (SR–Phlx–2010–135). An ''Unpriced Order'' was defined in this rule change as any order type permitted by the System to buy or sell shares of a security at the national best bid (best offer) (''NBBO'') at the time when the order reaches the System.

[17] *See* Securities Exchange Act Commission [sic] Release No. 75293 (June 24, 2015), 80 FR 37327 (June 30, 2015) (SR–Phlx–2015–29).

best bid and offer (''NBBO'') at the time the Exchange receives the order. The Exchange believes that most market participants expect that their order will be executed at its full size at a price reasonably related to the prevailing market. However, market participants may not be aware that there is insufficient liquidity at or near the NBBO to fill the entire order, particularly for more thinly-traded securities.

The Exchange proposes to memorialize this collar, which currently exists in its trading and routing systems functionality, and define it specifically as applicable to Primary and Market Pegging Orders. The Exchange seeks to memorialize the rule within Rule 3301B, entitled ''Order Attributes.'' The new rule text would state, ''Primary Pegging Orders and Market Pegging Orders are subject to a collar. Any portion of a Primary Pegging Order or Market Pegging Order that would execute, either on the Exchange or when routed to another market center, at a price of more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.''

The following example illustrates how the collar works. A market participant submits a routable order to buy 500 shares. The NBBO is $6.00 bid by $6.05 offer, with 100 shares available on each side. Both sides of the NBBO are set by another market center (''Away Market''), but PSX has 100 shares available at the $6.05 to sell at the offer price and also has reserve orders to sell 100 shares at $6.32 and 400 shares at $6.40. No other market center is publishing offers to sell the security in between $6.05 and $6.40.

In this example, the order would be executed in the following manner:

- 100 shares would be executed by PSX at the $6.05;
- 400 shares would be routed to the Away Market as an immediate or cancel order with a price of $6.05;
- 100 shares executed by the Away Market;[18]
- 300 shares returned to PSX;
- 100 shares executed by PSX at $6.32 (more than $0.25 but less than 5 percent worse than the NBBO); and 200 shares, representing the remainder of the order, would be cancelled because the remaining liquidity available at $6.40 is more than 5 percent worse than the NBBO.

Implementation of Pegging Order Collar

The Exchange intends to implement the Pegging Order Collar as soon as practicable pursuant to this proposal. The Exchange requests a waiver of the operative delay to implement the Pegging Order Collar.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by mitigating risks to market participants of human error in entering Limit Orders at clearly unintended prices. The proposal will allow for protections for Limit Orders which should encourage price continuity and, in turn, protect investors and the public interest by reducing executions occurring at dislocated prices.

The Exchange's proposal to amend the language concerning the modification of Orders is consistent with the Act because only new Orders would be subject to LOP. The proposed new language specifies that Orders that are modified for size and remain in the Order Book with the same priority, because only size was modified to reduce the size, will not be subject to LOP. Other modifications to Orders that amend the timestamp or priority will subject the modified orders to LOP because these Orders will be submitted into the System as new Orders. The LOP functionality protects market participants by reducing the risk that Midpoint Pegging Orders will execute at prices that are significantly worse than the national best bid and offer (''NBBO'') at the time the Exchange receives the order.

The LOP feature assists with the maintenance of fair and orderly markets by mitigating the risks associated with errors resulting in executions at prices that are away from the Best Bid or Offer and potentially erroneous. Further it protects investors from potentially receiving executions away from the prevailing prices at any given time. The Exchange adopted LOP to avoid a series of improperly priced aggressive orders transacting in the Order Book.

The Exchange believes that excluding Primary Pegging and Market Pegging Orders is consistent with the Act because including such orders may result in removing orders that were intended to be more aggressive or to set the bid or offer on the market due to the order attributes noted in the Purpose section of this rule change. Market and Primary Pegging Orders are also currently subject to a collar. Market and Primary Pegging Orders that would execute, either on the Exchange or when routed to another market center, at a price of more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.[21] Further, the Market Pegging Order has its own process for rejecting those orders where no price exists to which a Pegged Order can be pegged.

This feature should create a level of protection that prevents the Limit Orders from entering the Order Book outside of an acceptable range for the Limit Order to execute. The LOP should reduce the negative impacts of sudden, unanticipated volatility, and serve to preserve an orderly market in a transparent and uniform manner, increase overall market confidence, and promote fair and orderly markets and the protection of investors.

Pegging Order Collar

The Exchange believes that the collar proposal is consistent with the Act because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by avoiding execution of Primary and Market Pegging Orders (either on PSX or on other market centers as a result of orders routed by PSX) at prices that are significantly worse than the NBBO at the time the order is initially received. The NBBO provides reasonable guidance of the current value of a given security and therefore market participants should have confidence that their Market and Primary Pegging Orders will not be executed at a significantly worse price than the NBBO.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The LOP feature should provide market participants with additional price

[18] This assumes that the Away Market's offer was still available and that the Away Market had no additional non-displayed orders at this price.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] The Exchange inadvertently removed the rule from the Phlx Rulebook. The Exchange proposes to adopt the rule herein.

protection from anomalous executions. This feature is not optional and is applicable to all members submitting Limit Orders. Thus, the Exchange does not believe the proposal creates any significant impact on competition. In addition, the proposed collar in Rule 3301B would be applicable to all Market and Primary Pegging Orders entered into the PSX System. Similarly, all Midpoint Pegging Order will be subject to LOP, unless they have a discretion attribute.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or 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 and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [23] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [24] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. When the Exchange first proposed the LOP, the Exchange represented that it would implement the LOP within 90 days of obtaining Commission approval (*i.e.,* by November 22, 2016).[25] The Exchange now proposes to extend the LOP implementation date by 60 days in order to include the modifications in this proposed rule change with the implementation of the LOP. Waiver of the 30-day operative delay would allow the Exchange to immediately extend the LOP implementation date. The waiver would also permit the Exchange to immediately clarify the application of the LOP to modified orders. Moreover, the waiver would allow the Exchange to immediately exclude from the LOP Market Pegging Orders, Primary Pegging Orders, and Midpoint Pegging Orders that have a discretion price. As noted above, the Exchange proposes to exclude these Orders because these Orders may be intended to be aggressive or to set the bid or offer on the market. Moreover, as noted above, Market and Primary Pegging Orders are currently subject to collars. Lastly, the waiver would allow the Exchange's rules to immediately and accurately reflect the current collars for Market and Primary Pegging Orders, which were removed inadvertently. Accordingly, the Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.[26]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–113 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–Phlx–2016–113. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–113 and should be submitted on or before December 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Brent J. Fields,

Secretary.

[FR Doc. 2016–28033 Filed 11–21–16; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] *See* Securities Exchange Act Release Nos. 78245 (July 7, 2016), 81 FR 45337 (July 13, 2016) (noticing SR–Phlx–2016–58) and 78667 (August 24, 2016), 81 FR 59672 (August 30, 2016) (approving SR–Phlx–2016–58).

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14921 and #14922]

South Carolina Disaster Number SC–00040

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major

disaster for the State of South Carolina (FEMA–4286–DR), dated 10/14/2016.

Incident: Hurricane Matthew.

Incident Period: 10/04/2016 through 10/30/2016.

Effective Date: 11/15/2016.

Physical Loan Application Deadline Date: 12/13/2016.

EIDL Loan Application Deadline Date: 07/12/2017.

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: The notice of the President's major disaster declaration for the State of South Carolina, dated 10/14/2016 is hereby amended to establish the incident period for this disaster as beginning 10/04/2016 and continuing through 10/30/2016.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–28073 Filed 11–21–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14970 and #14971]

North Carolina Disaster Number NC–00086

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Carolina (FEMA–4285–DR), dated 11/10/2016.

Incident: Hurricane Matthew.

Incident Period: 10/04/2016 through 10/24/2016.

Effective Date: 11/15/2016.

Physical Loan Application Deadline Date: 01/09/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 08/10/2017.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of North Carolina, dated 11/10/2016, is hereby amended to establish the incident period for this disaster as beginning 10/04/2016 and continuing through 10/24/2016.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–28070 Filed 11–21–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14911 and #14912]

North Carolina Disaster Number NC–00081

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 13.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4285–DR), dated 10/10/2016.

Incident: Hurricane Matthew.

Incident Period: 10/04/2016 through 10/24/2016.

Effective Date: 11/15/2016.

Physical Loan Application Deadline Date: 12/09/2016.

EIDL Loan Application Deadline Date: 07/10/2017.

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: The notice of the President's major disaster declaration for the State of North Carolina, dated 10/10/2016 is hereby amended to establish the incident period for this disaster as beginning 10/04/2016 and continuing through 10/24/2016 .

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–28075 Filed 11–21–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14927 and #14928]

South Carolina Disaster Number SC–00041

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Carolina (FEMA–4286–DR), dated 10/18/2016.

Incident: Hurricane Matthew.

Incident Period: 10/04/2016 through 10/30/2016.

Effective Date: 11/15/2016.

Physical Loan Application Deadline Date: 12/19/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 07/18/2017.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of South Carolina, dated 10/18/2016, is hereby amended to establish the incident period for this disaster as beginning 10/04/2016 and continuing through 10/30/2016.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–28076 Filed 11–21–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 9789]

30-Day Notice of Proposed Information Collection: Self Certification and Ability To Perform in Emergencies (ESCAPE) Program

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to December 22, 2016.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Joan F. Grew, who may be reached on 703–875–5412 or at *GrewJF@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Self Certification and Ability To Perform in Emergencies (ESCAPE) Program.
- *OMB Control Number:* 1405–0224.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Medical Services (MED).
- *Form Number:* DS–6570.
- *Respondents:* Non-federal individuals being considered for contracted assignments at ESCAPE-designated posts.
- *Estimated Number of Respondents:* 200.
- *Estimated Number of Responses:* 200.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 100 annual hours.
- *Frequency:* One time per deployment to ESCAPE post.
- *Obligation to Respond:* Required to obtain a benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The goal of the ''Self Certification and Ability To Perform In Emergencies'' (ESCAPE) program is to ensure that non-federal individuals who are being considered for a contracted position at a designated post are capable of the unique, potentially challenging and life threatening conditions at ESCAPE posts. These individuals are required to review with a medical provider the pre-deployment acknowledgement form (DS–6570) and then affirm that they understand the physical rigors and security conditions at these posts and can perform any specified emergency functions. Medical information is collected from medical providers and respondents during this review. The Department of State is requesting approval of this Information Collection so non-federal individuals who will be selected for assignments can provide completed pre-deployment medical information. This Collection is allowed under the Foreign Service Act of 1980 (22 U.S.C. 3901) and the Basic Authorities Act of 1956 (22 U.S.C. 2651).

Methodology

The information collected will be collected using a form (DS–6570) during a medical review between a non-federal individual and his/her medical provider. The individual will submit the completed form, signed by both the individual and provider, to the Bureau of Medical Services at the U.S. Department of States.

Behzad Shahbazian,

Director of Clinical Services, Bureau of Medical Services, Department of State.

[FR Doc. 2016–28044 Filed 11–21–16; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0412]

Post-Accident Reporting (PAR) Advisory Committee Meeting: Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Announcement of advisory committee public meeting.

SUMMARY: FMCSA announces a meeting of its Post-Accident Reporting (PAR) Advisory Committee on Tuesday, and Wednesday, December 6 and 7, 2016. The PAR Advisory Committee will continue the work it began as a subcommittee of the Motor Carrier Safety Advisory Committee (MCSAC) in April 2016 at the meeting of the Commercial Vehicle Safety Alliance (CVSA). Under section 5306 of the FAST Act, the PAR is charged with reviewing post-accident reports and making recommendations on the data elements required by the reports and any modifications that may improve their use through the addition of data elements. The PAR will deliberate on Task 16–1 and make recommendations to the FMCSA Administrator for transmittal to the Secretary. The meeting is open to the public for its entirety.

TIMES AND DATES: The meeting will be held on Tuesday, December 6 and Wednesday, December 7, 2016, from 9:15 a.m. to 5 p.m., Eastern Time (E.T.), at the DoubleTree by Hilton Washington DC—Crystal City, 300 Army Navy Drive, Arlington, VA 22202. Copies of the task statement and an agenda for the entire meeting will be made available in advance of the meeting at *http://par.fmcsa.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Policy Advisor, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–5221.

Services for Individuals With Disabilities: For information on facilities

or services for individuals with disabilities or to request special assistance at the meeting, contact Eran Segev at (617) 494–3174, *eran.segev@dot.gov,* by Wednesday, November 30.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Secretary of Transportation established the PAR Working Group as a discretionary committee under the Federal Advisory Committee Act (FACA, 5 U.S.C. App 2) on October 13, 2016, making it effective through October 13, 2018. The PAR Working Group provides advice and recommendations to the FMCSA Administrator on post-accident reporting requirements, specifically those in section 5306, operating in accordance with FACA.

II. Meeting Participation

Oral comments from the public will be heard throughout the meeting, at the discretion of the PAR chairman. Members of the public may submit written comments on the topics to be considered during the meeting by Wednesday, November 30, to Federal Docket Management System (FDMC) Docket Number FMCSA–2016–0412 using any of the following methods:

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

Issued on: November 16, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–28015 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0012]

Hours of Service of Drivers: American Trucking Associations, Inc. (ATA) Exemption; FAST Act Extension of Compliance Date

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; extension of exemption.

SUMMARY: FMCSA announces the extension of the exemption from the 30-minute rest break requirement granted to the American Trucking Associations, Inc. (ATA) on August 21, 2015, on behalf of motor carriers whose drivers transport security-sensitive hazardous materials (HM) requiring constant attendance on the vehicle. The Agency extends the expiration date from August 21, 2015 to August 20, 2020, in response to section 5206(b)(2)(A) of the ''Fixing America's Surface Transportation Act'' (FAST Act), which extends hours-of-service (HOS) exemptions in effect on the date of enactment to 5 years from their date of issuance. The ATA rest break exemption is limited to drivers transporting HM loads requiring placarding under the HM regulations or select agents and toxins identified in the HM regulations that do not require placarding, and who have filed security plans requiring constant attendance of HM. The Agency previously determined that the CMV operations of drivers under this exemption would likely achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: This limited exemption is effective from August 21, 2015, through August 20, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614–942–6477. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** [49 CFR 381.315(a)].

Section 5206(b)(2)(A) of the FAST Act requires FMCSA to extend any exemption from any provision of the HOS regulations under 49 CFR part 395 that was in effect on the date of enactment of the Act to a period of 5 years from the date the exemption was granted. The exemption may be renewed. Because this action merely implements a statutory mandate that took effect on the date of enactment of the FAST Act, notice and comment are not required.

ATA Exemption

ATA, a trade association, applied for a limited exemption from the mandatory rest break requirement of 49 CFR 395.3(a)(3)(ii) on behalf of all motor carriers whose drivers transport HM loads subject to the Pipeline and Hazardous Materials Safety Administration's security plan requirement.

FMCSA reviewed ATA's application and the public comments and concluded that motor carriers may only use this exemption when their drivers are actually transporting HM that requires placarding or includes a select agent or toxin identified in § 172.800(b)(13), and for which a security plan has been filed under § 172.800–804. A Notice of Final Determination granting this ATA exemption was published on August 21, 2015 [80 FR 50912].

The substance of the exemption is not affected by this extension. The exemption covers only the 30-minute break requirement [49 CFR 395.3(a)(3)(ii)]. The exemption is restricted to drivers transporting HM loads requiring placarding under 49 CFR part 172, subpart F, or select agents and toxins identified in § 172.800(b)(13) that do not require placarding, and who have filed security plans requiring constant attendance of HM in accordance with §§ 172.800–804. On each trip, the drivers will be allowed to use 30 minutes or more of ''attendance time'' to meet the requirements for a rest break in the manner provide in 49 CFR 395.1(q) provided they perform no other on-duty activities during the rest break.

The FMCSA does not believe the safety record of any driver operating under this exemption will deteriorate. However, should deterioration in safety occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA has the authority to terminate the exemption at any time the Agency has the data/information to conclude that safety is being compromised.

Issued on: November 9, 2016.

T.F. Scott Darling, III,

Administrator.

[FR Doc. 2016–28014 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Discretionary Funding Opportunity: Zero Emission Research Opportunity

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Funding Opportunity (NOFO) and Request for Proposals (RFP).

SUMMARY: This competitive solicitation is for the Zero Emission Research Opportunity (ZERO), administered by the Federal Transit Administration. Available funding is $2.75 million in FTA research funds and this solicitation also will establish eligibility for possible future funding, subject to Congressional appropriations and FTA funding approval, for ZERO. The purpose of the program is to facilitate the advancement, production, and deployment of zero emission public transportation vehicle technology and related infrastructure. FTA intends to select, and enter into cooperative agreements with, multiple (up to 3) nonprofit consortia to continue building on past research innovation and development efforts to facilitate the deployment of zero emission vehicles and associated advanced technology. Eligibility for future ZERO funding opportunities in fiscal years 2017–2020 will be limited to those nonprofit consortia selected under this fiscal year 2017 notice. Potential research partners such as transit agencies, other nonprofits, vendors, suppliers and systems integrators may work with multiple consortia. The Federal cost share of a project carried out under ZERO shall not exceed 80 percent.

DATES: Complete proposals must be submitted electronically through the *GRANTS.GOV* ''APPLY'' function by 11:59 EST on February 21, 2017. Prospective applicants should initiate the process by registering on the *GRANTS.GOV* Web site promptly to ensure completion of the application process before the submission deadline. This announcement is also available at FTA's Web site at: *https://www.transit.dot.gov/funding/grants/notices* and in the ''FIND'' module of *GRANTS.GOV*. The funding opportunity ID is FTA–2016–009–TRI–ZERO and the Catalog of Federal Domestic Assistance (CFDA) number for Section 5312 is 20.514. Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Sean Ricketson, FTA Office of Research Demonstration and Innovation, (202) 366–6678 or *ZERO.FTA@dot.gov.* A TDD is available for individuals who are deaf or hard of hearing at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

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A. Program Description

1. Background

Advances in technology are enabling substantial changes in vehicle propulsion, transportation operations, and transportation service delivery. These changes are creating opportunities for our nation's transportation system to deliver higher levels of service at lower cost and with fewer externalities, benefitting all Americans. Opportunity for change also carries risk, however. Through the Zero Emission Research Opportunity (ZERO), FTA seeks to work with the public transportation industry to solve challenges, increase efficiency, and reduce the costs and risks of deploying zero emission vehicles in transit service.

In implementing ZERO, FTA intends to use a cooperative research model similar to FTA's successful National Fuel Cell Bus Program. Under this model, research and demonstration projects are defined and conducted by pre-selected non-profit third parties (non-profit consortia as defined in 49 U.S.C. 5312(e)(2)(B)) that, under FTA direction, assemble and manage teams of departments, agencies, and instrumentalities of the Federal Government, including federal laboratories; state and local governmental entities; providers of public transportation; private or non-profit organizations; institutions of higher education; and technical and community colleges. The model introduces an enhanced level of research management, program continuity, and flexibility to federally-funded transit research. It also provides a higher degree of innovation and resiliency, resulting in more successful projects. Through ZERO, FTA seeks to refine this research model with the goal of creating a research environment which results in greater industry involvement and more innovative and successful projects.

2. Scope

The purpose of ZERO is to work with U.S. industry to remove obstacles on the critical path to the wider adoption of zero emission technology in public transportation. Examples include improving charging standards for battery-electric transit vehicles, improved passenger compartment heating systems, or expanding hydrogen infrastructure. For purposes of this program, zero emission technology refers to any technology that provides a pathway to the immediate or eventual adoption of transit vehicles that produce no harmful emissions in any, and all, operating modes. Battery-electric and hydrogen fuel cell technology are typical examples. Not all pathways to zero emission vehicles have to be zero emission, but they have to be shown to be on an evolutionary pathway to zero emission. For example, hybrid technology is considered zero emission technology for the purposes of this program if it can be shown to advance the pathway to improved vehicle electrification.

This program focuses on one aspect of transportation emissions—those of systems under the control of a typical domestic transit agency, such as vehicles and fueling or charging systems. With the exception of applications such as solar panels on a maintenance garage roof, emissions from energy production are not targeted in this program. Programs addressing the emissions of energy production are carried out by the Department of Energy (DoE) and the Environmental Protection Agency (EPA). FTA coordinates with the DoE and EPA to eliminate duplication of effort and to ensure strategic consistency.

The projects under ZERO may address aspects of the following subject areas:

a. *Technology Research and Development*—improving the efficiency, reducing costs, and improving the performance of vehicles, vehicle systems, and subsystems.

b. *Transit Fleet Operations*—improving the efficiency, reducing costs, and improving the performance of vehicle fleets including maintenance and operations practices.

c. *Energy Infrastructure*—addressing challenges of supporting zero emission technology including hydrogen fueling, electric charging, and relationships with suppliers and electric utilities.

d. *Standards and Policy*—research to support standards development and testing protocols and to identify policies and policy changes to reduce costs and risks of adopting zero emission vehicle technology.

e. *Other*—FTA is open to considering other research subjects or combinations of subjects to advance zero emission technology.

B. Federal Award Information

Section 5312 of title 49, United States Code (Section 5312), authorizes FTA's Public Transportation Innovation program. Through this program, FTA may make grants, or enter into contracts, cooperative agreements and other agreements for research, development,

demonstration and deployment projects, and evaluation of research and technology of national significance to public transportation that the Secretary of Transportation determines will improve public transportation.

ZERO is funded under Section 5312 program authority. A total of $2.75 million in funds from FY 2014 and 2015 appropriations are available for awards under this announcement. FTA intends to award multiple projects under this announcement.

FTA may, at its discretion, provide additional funds for selections made under this announcement or for additional meritorious proposals from funds made available for 49 U.S.C. Section 5312.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants and recipients under this program are limited to non-profit organizations leading a consortium of entities as listed below. All consortia must include at least one provider of public transportation. As defined in Section 5312, the following entities may be part of a consortium:

a. Departments, agencies, and instrumentalities of the Federal Government, including Federal laboratories;

b. State and local governmental entities;

c. Providers of public transportation;

d. Private or non-profit organizations;

e. Institutions of higher education; and

f. Technical and community colleges.

2. Cost Sharing or Matching

The federal share of project costs under this program is limited to 80 percent. Applicants may seek a lower Federal contribution. The applicant must provide the required local share in cash or in-kind, and must document in its application the source of the local share. Eligible sources of local share are detailed in FTA Research Circular 6100.1E. (available at *http://www.fta.dot.gov/legislation_law/12349_16434.html*).

3. Eligible Projects

Eligible projects include those defined under 49 U.S.C. 5312(c), (d), and (e) that will build on successful research, innovation, and development efforts to facilitate the deployment of low or no emission vehicles, zero emission vehicles, or associated advanced technology.

Each consortium may propose up to three projects in its application. These are projects the consortium proposes for the first iteration of Federal funding under ZERO. For projects requesting more than $500,000, proposals should include one or more alternative funding schedules allowing the project to be funded incrementally in anticipation of additional future funding. However, given that future funding is not guaranteed, project proposals must provide meaningful deliverables for this first iteration of funding. The proposed projects must advance zero emission technology in public transportation by addressing one or more of the following subject areas:

a. *Technology Research and Development*—improving the efficiency, reducing costs, and improving the performance of vehicles, vehicle systems, and subsystems.

b. *Transit Fleet Operations*—improving the efficiency, reducing costs, and improving the performance of vehicle fleets including maintenance and operations practices.

c. *Energy Infrastructure*—addressing challenges of supporting zero emission technology including hydrogen fueling, electric charging, and relationships with suppliers and electric utilities.

d. *Standards and Policy*—research to support standards development and testing protocols and to identify policies and policy changes to reduce costs and risks of adopting zero emission vehicle technology.

e. *Other*—FTA is open to considering other research subjects or combinations of subjects to advance zero emission technology.

D. Application and Submission Information

1. Address and Form of Application Submission

Project proposals must be submitted electronically through *GRANTS.GOV* (*www.grants.gov*) by February 21, 2017. Mail and fax submissions will not be accepted. A complete proposal submission will consist of at least two files: (1) The SF–424 Mandatory form (downloaded from *GRANTS.GOV*) and (2) the Applicant and Proposal Profile for the ''Zero Emission Research Opportunity'' (ZERO Supplemental Form) found on *GRANTS.GOV* and the FTA Web site by clicking (or copying and pasting) the ZERO Program link at *www.transit.dot.gov/funding/grants/grant-programs/zero-emission-research-opportunity-ZERO*. The Supplemental Form provides guidance and a consistent format for proposers to respond to the criteria outlined in this NOFO.

2. Content and Form of Application Submission

a. Proposal Submission

A complete proposal submission consists of two forms: The SF–424 Mandatory Form, and the ZERO Supplemental Form. FTA will evaluate only complete applications.

The Supplemental Form must be placed in the attachments section of the SF–424 Mandatory Form. Proposers must use the Supplemental Form designated for ZERO and attach it to the submission in *GRANTS.GOV* to successfully complete the application process.

A proposal submission may contain additional supporting documentation as attachments. If an applicant elects to attach an additional narrative, it must not exceed 10 numbered pages. Submissions must be presentable and use standard fonts, font sizing, and at least one-inch margins so reviewers can easily read the information.

Within 48 hours after submitting an electronic application, the applicant should receive three email messages from *GRANTS.GOV*: (1) Confirmation of successful transmission to *GRANTS.GOV*, (2) confirmation of successful validation by *GRANTS.GOV*, and (3) confirmation of successful validation by FTA. If confirmations of successful validation are not received or a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the Supplemental Form indicating this is a resubmission.

FTA urges proposers to submit applications at least 72 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. FTA will not accept submissions after the stated deadline. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* Web site. Deadlines will not be extended due to scheduled Web site maintenance.

Proposers are encouraged to begin the process of registration on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered proposers may be required to take steps to keep their registration up to date before submissions can be made

successfully: (1) Registration in the System for Award Management (SAM) is renewed annually; and, (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions. Instructions on the *GRANTS.GOV* registration process are provided in the Appendix.

Information such as the proposer's name, Federal amount requested, local match amount, description of areas served, etc. may be requested in varying degrees of detail on both the SF–424 form and Supplemental Form. Proposers must fill in all fields unless stated otherwise on the forms. The Supplemental Form template supports pasting copied text with limited formatting from other documents; applicants should verify that pasted text is fully captured on the Supplemental Form and has not been truncated by the character limits built into the form. Proposers should use both the ''Check Package for Errors'' and the ''Validate Form'' validation buttons on both forms to check all required fields on the forms, and ensure that the Federal and local amounts specified are consistent.

b. Application Content

The SF–424 Mandatory Form and the Supplemental Form will prompt applicants for the required information, including the:

(i) Applicant name;

(ii) Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number if available. (**Note:** If selected, the applicant will be required to provide its DUNS number prior to award);

(iii) Key contact information including contact name, address, email address, and phone number;

(iv) Congressional district(s) of the applicant;

(v) A list of consortium organizational members, by organization name and address;

(vi) Documentation of membership of each organizational member of the consortium (*e.g.,* memorandum of understanding, letter of commitment, or other documentation);

(vii) A schedule outlining steps and milestones for each project;

(viii) A detailed description of the consortium's project experience, providing details of the projects the consortium has led and how those details support the evaluation criteria;

(ix) A detailed description of the consortium's experience working with zero emission technology and any related technology;

(x) A detailed description of the consortium's public transportation experience;

(xi) A detailed description of the consortium's experience working with the Federal research programs;

(xii) A detailed description of the consortium's experience functioning as a research organization;

(xiii) Descriptions of up to three proposed projects, including project deliverables, schedule and budget; and

(xiv) A detailed description of technical, financial and legal capacity to administer the proposed projects.

Applicants may also support their applications by including an example of a statement of work, budget, or project plan from an existing or previously funded research project.

c. Unique Entity Identifier and System for Award Management (SAM)

Registration can take as little as 3–5 business days, but since there could be unexpected steps or delays (for example, if the applicant needs to obtain an Employer Identification Number), FTA recommends allowing ample time, up to several weeks, for completion of all steps.

Step 1: Obtain DUNS Number

If requested by phone (1–866–705–5711) DUNS is provided immediately.

If your organization does not have one, you will need to go to the Dun & Bradstreet Web site at *http://fedgov.dnb.com/webform* to obtain the number. * Information for Foreign Registrants. * Webform requests take 1–2 business days.

Step 2: Register with SAM

If you already have an Employer Identification Number, your SAM registration will take 3 to 5 business days to process. If you are applying for an Employer Identification Number please allow up to two weeks. Ensure that your organization is registered with the System for Award Management (SAM). If your organization is not registered, an authorizing official of your organization must register at *www.sam.gov.*

Step 3: Username & Password

Complete your AOR (Authorized Organization Representative) profile on *GRANTS.GOV* and create your username and password. You will need to use your organization's DUNS Number to complete this step. *https://apply07.grants.gov/apply/OrcRegister.*

Step 4: AOR Authorization

The E-Business Point of Contact (E-Biz POC) at your organization must login to GRANTS.GOV to confirm you as an Authorized Organization Representative (AOR). Please note that there can be more than one AOR for your organization. In some cases the E-Biz POC is also the AOR for an organization. * Time to complete this step depends on the responsiveness of your E-Biz POC.

Step 5: Track AOR Status

At any time, you can track your AOR status by logging in with your username and password. Login as an Applicant (enter your username & password you obtained in Step 3) using the following link: *applicant__profile.jsp.*

d. Submission Dates and Times

Project proposals must be submitted electronically through *GRANTS.GOV* by February 21, 2017. Mail and fax submissions will not be accepted.

e. Funding Restriction

FTA will issue specific guidance to recipients regarding pre-award authority at the time of selection. FTA does not provide pre-award authority for competitive funds until projects are selected and even then there are Federal requirements that must be met before costs are incurred. Preparation of proposals is not an eligible pre-award expense.

E. Application Review

1. Evaluation Criteria

FTA will use the following criteria when evaluating applications:

a. *Project Experience*—Consortia will be evaluated based on their experience and track record in designing, leading and executing transportation research or demonstration projects. The applicant must demonstrate the experience and ability to bring together both private and public industry partners to design and execute research or demonstration projects with multi-million dollar budgets.

b. *Technology experience*—Consortia will be evaluated based on their knowledge and experience working with zero emission technology, including in various public transportation modes.

c. *Public transportation experience*—Consortia will be evaluated based on their experience and ability working with U.S. public transportation agencies, and in the field of public transportation. Applicants should name the public transportation agencies they have worked with in their applications.

d. *Federal Research or Demonstration Experience*—Consortia will be evaluated based on their experience and ability managing Federal research or demonstration projects, and

understanding and meeting Federal requirements.

e. *Organizational Experience*—Consortia will be evaluated based on their experience operating as a team with regard to the above areas. Where some consortia may have member organizations with experience and expertise, the expertise and experience of the consortium as a team working together is also important. This criterion addresses this issue.

f. *Proposed Projects (A consortium may submit up to three proposed projects)* Applications will be evaluated based on the following:

(i) The extent to which the proposed projects will advance zero emission technology in public transportation applications, and

(ii) The effectiveness of the proposed project in advancing zero emission technology relative to the amount of FTA investment.

2. Review and Selection Process

FTA staff will comprise the technical evaluation committee and will review applications against the described evaluation criteria. The technical evaluation committee reserves the right to evaluate proposals it receives and to seek clarification from any proposer about any statement that is made in a proposal that FTA finds ambiguous. FTA may also request additional documentation or information to be considered during the evaluation process. After the evaluation of all eligible proposals, the technical evaluation committee will provide recommendations to the FTA Administrator or designee. The FTA Administrator or designee will determine the final list of consortia and the amount of funding for each consortium's proposed projects. FTA may choose to fund some, all, part, or none of a selected consortium's proposed projects. To better evaluate technologies in a variety of conditions and locales, FTA may select a portfolio of geographically diverse projects.

F. Federal Award Administration

1. Federal Award Notice

Subsequent to an announcement by the FTA Administrator or designee of the final project selections posted on FTA's Web site, FTA will publish a list of the selected projects, including Federal dollar amounts and recipients.

All information submitted as part of or in support of a ZERO application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the submission includes information the applicant considers to be trade secret or confidential commercial or financial information, the applicant should do the following: (1) On the Supplemental Form, on every relevant page, select the button to affirm that the submission ''Contains Confidential Business Information (CBI);'' (2) On any other documentation, mark each affected page ''CBI;'' and (3) highlight or otherwise denote the CBI portions. FTA protects such information from disclosure to the extent allowed under applicable law. In the event FTA receives a Freedom of Information Act (FOIA) request for the information, FTA will follow the procedures described in the U.S. DOT FOIA regulations at 49 CFR part 7. Only information that ultimately is determined to be confidential under the regulations will be exempt from disclosure under FOIA. Should FTA receive an order from a court of competent jurisdiction ordering the release of the information, FTA will provide the applicant timely notice of such order to allow the applicant the opportunity to challenge such an order. FTA will not challenge a court order on behalf of an applicant.

2. Award Administration

Successful proposals will be awarded funding through FTA's Transit Award Management System (TrAMS) as Cooperative Agreements. The FTA Research Office will manage those Cooperative Agreements. Apart from the specific terms and conditions within the Scope of Work, general terms and conditions for Grant Agreements and Cooperative Agreements are found at *www.transit.dot.gov.*

Applicants must sign and submit current Certifications and Assurances before FTA may award funding under a Cooperative Agreement for a competitively selected project. If the applicant has already submitted its annual Certifications and Assurances for the fiscal year in which the award will be made in TrAMS, it does not need to be resubmitted.

To enhance the value of the portfolio of the projects to be implemented, FTA reserves the right to request an adjustment of the project scope and budget of any proposal selected for funding. Such adjustments shall not constitute a material alteration of any aspect of the proposal that influenced the proposal evaluation or decision to fund the project.

3. Administrative and National Policy Requirements

Except as otherwise provided in this NOFO, cooperative agreements are subject to the requirements of 49 U.S.C. 5312 as described in the latest FTA Research Circular, currently 6100.1E, ''Research, Technical Assistance and Training Program: Application Instructions and Program Management Guidelines.'' In particular, the recipient(s) of a ZERO award must submit quarterly Federal Financial Reports and Milestone Progress Reports in TrAMS.

4. Reporting, Data and Information Exchange, and Data Requirements

In order to achieve a comprehensive understanding of the impacts and implications of ZERO, FTA, or its designated independent evaluator, will require direct access to project data. Projects should include a data capture component that allows for the reliable and consistent collection of information relevant to gauging the impact and outcomes of the project.

At any time during the period of performance, the project team may be requested to coordinate data collection activities in order to provide interim information under the requirements of this award. A project team may be asked to provide the data directly to FTA or to a designated independent evaluator. This information, if requested, will be used to conduct program evaluations during the execution of the project and after it has been completed.

G. Federal Awarding Agency Contacts

For further information concerning this NOFO please contact the ZERO staff via email at *ZERO.FTA@dot.gov,* or call Sean Ricketson at 202–366–6678. A TDD is available for individuals who are deaf or hard of hearing at 1–800–877–8339. In addition, FTA will post answers to questions and requests for clarifications on FTA's Web site at *https://www.transit.dot.gov/about/research-innovation/ZERO.* To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact DOT directly with questions, rather than through intermediaries or third parties. DOT staff may also conduct briefings on the ZERO selection and award process upon request.

H. Other Information

The applicant must assure that it will comply with all applicable Federal statutes, regulations, executive orders, FTA Circulars, and other Federal administrative requirements in carrying out any project supported by the FTA

agreement. The applicant must acknowledge that it is under a continuing obligation to comply with the terms and conditions of the Cooperative Agreement it executes with FTA for its project. The applicant must acknowledge that it understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant must agree that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

Issued in Washington, DC, this sixteenth day of November 2016.

Matthew Welbes,

Executive Director.

[FR Doc. 2016–28069 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Number: FTA–2016–0044]

Notice of Availability of Programmatic Assessment of Greenhouse Gas Emissions From Transit Projects

AGENCIES: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability; Request for comments.

SUMMARY: The Federal Transit Administration (FTA) announces the availability of a draft Programmatic Assessment of Greenhouse Gas Emissions from Transit Projects (Programmatic Assessment) and an accompanying Greenhouse Gas Emissions (GHG) Estimator Tool (Estimator Tool). The purpose of the draft Programmatic Assessment is to: (1) Report on whether certain types of proposed transit projects merit detailed analysis of their GHG emissions at the project-level; and (2) provide a source of data and analysis for FTA and its grantees to reference in future environmental documents for projects where detailed, project-level GHG analysis would provide limited information beyond what is collected and considered in the assessment. The draft Programmatic Assessment presents estimates of GHG emissions generated from the construction, operations, and maintenance phases of projects across select transit modes, as well as an estimate of personal vehicle emissions displaced due to transit's ''ridership effect.'' The associated Estimator Tool is a spreadsheet tool that allows users to calculate partial lifecycle GHG emissions estimates by transit mode based on limited data inputs. FTA's draft Programmatic Assessment or Estimator Tool is not a requirement; agencies and states may use other methods for reporting GHG emissions related to state GHG reporting regulations, as needed and as appropriate. Use of FTA's draft Programmatic Assessment or Estimator Tool is not a requirement, if agencies and states are utilizing other methods for reporting GHG emissions related to state GHG reporting regulations. The FTA requests public comments on the Programmatic Assessment and the Estimator Tool.

DATES: Comments must be received by January 6, 2017. Late filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments to Docket No. FTA–2016–0044 by any of the following methods:

Federal eRulemaking Portal: Go to *www.regulations.gov* and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 8:30 a.m. and 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and the Docket Number of this notice at the beginning of your comments. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: Maya Sarna, Office of Environmental Programs, (202) 366–5811, or Christopher Van Wyk, Office of Environmental Programs, (202) 366–1733; Helen Serassio, Office of Chief Counsel, (202) 366–1974. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In August 2016, the Council on Environmental Quality (CEQ) released its *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act (NEPA) Reviews.* The guidance provides a framework for agencies to consider the effects of a proposed action on climate change, as indicated by its estimated GHG emissions. The CEQ guidance notes that an agency may decide, rather than analyze GHG emissions project-by-project, that it would be useful and efficient to provide an aggregate analysis of GHG emissions or climate change effects through programmatic analysis and then incorporate that analysis by reference into future NEPA reviews. FTA currently considers it practicable to assess the effects of GHG emissions and climate change for a variety of transit projects at a programmatic level.

The purpose of the *Programmatic Assessment of Greenhouse Gas Emissions from Transit Projects* is to: (1) Report on whether certain types of proposed transit projects merit detailed analysis of their GHG emissions at the project-level; and (2) provide a source of data and analysis for FTA and its grantees to reference in future environmental documents for projects where detailed, project-level GHG analysis would provide only limited information beyond what is collected and considered in the assessment. The Programmatic Assessment presents results from an analysis to estimate direct and indirect GHG emissions generated from the construction, operations, and maintenance phases of projects across select transit modes. The findings provide a reference for FTA and its grantees to use in future NEPA documents to describe the potential effects of proposed transit investments on partial lifecycle GHG emissions. This assessment's results can inform transit project sponsors who are considering the implications of GHG emissions of future transit investments or who might independently want to evaluate the greenhouse gas emissions benefits and cost of such investments. As part of the draft Programmatic Assessment, FTA developed the Estimator Tool. The Estimator Tool is a spreadsheet based tool that allows users to calculate partial lifecycle GHG emissions estimates by transit mode for the construction, maintenance, and operations phases of transit project development, as well as an estimate of personal vehicle emissions displaced due to transit's ''ridership effect.''

FTA requests comments on the draft Programmatic Assessment and the accompanying Estimator Tool, which are available on the docket. Comments

can be made in the docket (FTA–2016–0044). FTA will respond to comments received on the draft Programmatic Assessment and Estimator Tool in a second **Federal Register** notice to be published after the comment period closes. That second notice will also announce the availability of a final Programmatic Assessment and the Estimator Tool that reflects any changes implemented as a result of comments received.

Authority: 42 U.S.C. 4321 *et seq.;* 40 CFR 1507.3; 49 CFR 1.81(a)(5).

Lucy Garliauskas,

Associate Administrator, Office of Planning and Environment, Federal Transit Administration.

[FR Doc. 2016–28104 Filed 11–21–16; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2016–0032]

Mutual Savings Association Advisory Committee

AGENCY: Office of the Comptroller of the Currency (OCC), Department of the Treasury.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The OCC announces a meeting of the Mutual Savings Association Advisory Committee (MSAAC).

DATES: A public meeting of the MSAAC will be held on Thursday, December 8, 2016, beginning at 8:30 a.m. Eastern Standard Time (EST).

ADDRESSES: The OCC will hold the December 8, 2016 meeting of the MSAAC at the OCC's offices at 400 7th Street SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Michael R. Brickman, Deputy Comptroller for Thrift Supervision, (202) 649–5420, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: By this notice, the OCC is announcing that the MSAAC will convene a meeting on Thursday, December 8, 2016, at the OCC's offices at 400 7th Street SW., Washington, DC 20219. The meeting is open to the public and will begin at 8:30 a.m. EST. The purpose of the meeting is for the MSAAC to advise the OCC on regulatory changes or other steps the OCC may be able to take to ensure the continued health and viability of mutual savings associations and other issues of concern to existing mutual savings associations. The agenda includes a discussion of current topics of interest to the industry.

Members of the public may submit written statements to the MSAAC. The OCC must receive written statements no later than 5:00 p.m. EST on Thursday, December 1, 2016. Members of the public may submit written statements to *MSAAC@occ.treas.gov* or by mailing them to Michael R. Brickman, Designated Federal Officer, Mutual Savings Association Advisory Committee, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Members of the public who plan to attend the meeting should contact the OCC by 5:00 p.m. EST on Thursday, December 1, 2016, to inform the OCC of their desire to attend the meeting and to provide information that will be required to facilitate entry into the meeting. Members of the public may contact the OCC via email at *MSAAC@OCC.treas.gov* or by telephone at (202) 649–5420. Members of the public who are deaf or hard of hearing should call (202) 649–5597 (TTY) by 5:00 p.m. EST Thursday, December 1, 2016, to arrange auxiliary aids such as sign language interpretation for this meeting.

Attendees should provide their full name, email address, and organization, if any. For security reasons, attendees will be subject to security screening procedures and must present a valid government-issued identification to enter the building.

Dated: November 16, 2016.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2016–28021 Filed 11–21–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 17, 2016.

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 December 22, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, 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 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–0934, or viewing the entire information collection request at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Control Number: 1545–0731.

Type of Review: Extension without change of a currently approved collection.

Title: Definition of an S Corporation.

Abstract: The regulations provide the procedures and the statements to be filed by certain individuals for making the election under section 1361(d)(2). The statements required to be filed would be used to verify that taxpayers are complying with requirements imposed by Congress under subchapter S.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 1,005.

OMB Control Number: 1545–0763.

Type of Review: Extension without change of a currently approved collection.

Title: Qualified Conservation Contributions.

Abstract: The information is necessary to comply with various substantive requirements of section 170(h), which describes situations in which a taxpayer is entitled to an income tax deduction for a charitable contribution for conservation purposes of a partial interest in real property.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 1,250.

OMB Control Number: 1545–0782.

Type of Review: Extension without change of a currently approved collection.

Title: Limitation on reduction in income tax liability incurred to the Virgin Islands.

Abstract: The Tax Reform Act of 1986 repealed the mandatory reporting and recordkeeping requirements of section 934(d)(1954 Code). The prior exception to the general rule of section 934 (1954 Code) to prevent the Government of the

U.S. Virgin Islands from granting tax rebates with regard to taxes attributable to income derived from sources within the U.S. was contingent upon the taxpayer's compliance with the reporting requirements of section 934(d).

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 185.

OMB Control Number: 1545–0959.

Type of Review: Extension without change of a currently approved collection.

Title: Qualified Disclaimers of Property.

Abstract: 26 U.S.C. Section 2518 allows a person to disclaim an interest in property received by gift or inheritance. The interest is treated as if the dis-claimant never received or transferred such interest for Federal gift tax purposes. A qualified disclaimer must be in writing and delivered to the transferor or trustee.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 1,000.

OMB Control Number: 1545–0990.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8610, Annual Low-Income Housing Credit Agencies Report, and Schedule A (Form 8610), Carryover Allocation of Low-Income Housing Credit.

Form: 8610, SCH A (Form 8610).

Abstract: State housing credit agencies (Agencies) are required by Code section 42(l)(3) to report annually the amount of low-income housing credits that they allocated to qualified buildings during the year. Agencies report the amount allocated to the building owners and to the IRS in Part I of Form 8609. Carryover allocations are reported to the Agencies in carryover allocation documents. The Agencies report the carryover allocations to the IRS on Schedule A (Form 8610). Form 8610 is a transmittal and reconciliation document for Forms 8609, Schedule A (Form 8610), binding agreements, and election statements.

Affected Public: State, Local, and Tribal Governments.

Estimated Total Annual Burden Hours: 6,738.

OMB Control Number: 1545–1219.

Type of Review: Extension without change of a currently approved collection.

Title: Arbitrage Rebate, Yield Restrictions and Penalty in Lieu of Arbitrage Rebate.

Abstract: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issuers include state and local governments.

Forms: 8038–T.

Affected Public: State, Local, and Tribal Governments.

Estimated Total Annual Burden Hours: 57,900.

OMB Control Number: 1545–1361.

Type of Review: Extension without change of a currently approved collection.

Title: 26 CFR part 52, Environmental Taxes.

Abstract: Section 4681 imposes a tax on ozone-depleting chemicals sold or used by a manufacturer or importer thereof. Section 4681 also imposes a tax on ozone-depleting chemicals sold or used by a manufacturer or importer thereof and imported taxable products sold or used by an importer thereof. A floor stocks tax is also imposed. Section 4682 provides exemptions and reduced rates of tax for certain uses of ozone-depleting chemicals. These regulations provide reporting and recordkeeping rules and have been codified under 26 CFR part 52.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 75,265.

OMB Control Number: 1545–2036.

Type of Review: Extension without change of a currently approved collection.

Title: Taxation and Reporting of REIT Excess Inclusion Income by REITs, RICs, and Other Pass-Through Entities (Notice 2006–97).

Abstract: The notice requires certain REITs, RICs, partnerships and other Pass-Through Entities that have excess inclusion income to disclose the amount and character of such income allocable to their record interest owners. The record interest owners need the information to properly report and pay taxes on such income.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 100.

OMB Control Number: 1545–2047.

Type of Review: Revision of a currently approved collection.

Title: Rescission of penalty for failure to include reportable transaction information with return.

Abstract: This revenue procedure provides guidance to persons who are assessed a penalty under section 6707A or 6707 of the Internal Revenue Code, and who may request rescission of those penalties from the Commissioner if the penalty is with respect to a reportable transaction other than a listed transaction.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 3,866.

OMB Control Number: 1545–2161.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8038–B—Information Return for Build America Bonds and Recovery Zone Economic Development Bonds.

Forms: 8038–B.

Abstract: Form 8038–B has been developed to assist issuers of the new types of Build America and Recovery Zone Economic Development Bonds enacted under the American Recovery and Reinvestment Act of 2009 to capture information required by IRC section 149(e).

Affected Public: State, Local, and Tribal Governments.

Estimated Total Annual Burden Hours: 113,661.

Bob Faber,

Acting Treasury PRA Clearance Officer.

[FR Doc. 2016–28092 Filed 11–21–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 17, 2016.

The Department of the Treasury will submit the following information collection request 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 December 22, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, 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 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–0934, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of the Fiscal Service (FS)

OMB Control Number: 1530–0066.

Type of Review: Extension without change of a currently approved collection.

Title: CMIA Annual Report and Interest Calculation Cost Claims.

Abstract: PL 101–453 requires that States and Territories must report interest liabilities for major Federal assistance programs annually. States and Territories may report interest calculation cost claims for compensation of administrative costs.

Affected Public: State, Local, and Tribal Governments.

Estimated Total Annual Burden Hours: 22,036.

Bob Faber,

Acting Treasury PRA Clearance Officer.

[FR Doc. 2016–28093 Filed 11–21–16; 8:45 am]

BILLING CODE 4810–AS–P

FEDERAL REGISTER

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Book 2 of 2 Books

Pages 83933–84388

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); Final 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: Final rule; official interpretations.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) is issuing this final rule to create comprehensive consumer protections for prepaid accounts under Regulation E, which implements the Electronic Fund Transfer Act; Regulation Z, which implements the Truth in Lending Act; and the official interpretations to those regulations. The final rule modifies general Regulation E requirements to create tailored provisions governing disclosures, limited liability and error resolution, and periodic statements, and adds new requirements regarding the posting of account agreements. Additionally, the final rule regulates overdraft credit features that may be offered in conjunction with prepaid accounts. Subject to certain exceptions, such credit features will be covered under Regulation Z where the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner and credit can be accessed in the course of a transaction conducted with a prepaid card.

DATES: This rule is effective on October 1, 2017, except for the addition of § 1005.19(b), which is delayed until October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Jane Raso, Yaritza Velez, and Shiri Wolf, Counsels; Kristine M. Andreassen, Krista Ayoub, and Marta I. Tanenhaus, Senior Counsels, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

Regulation E implements the Electronic Fund Transfer Act (EFTA), and Regulation Z implements the Truth in Lending Act (TILA). On November 13, 2014, the Bureau issued a proposed rule to amend Regulations E and Z, which was published in the **Federal Register** on December 23, 2014 (the proposal or the proposed rule).[1] The Bureau is publishing herein final amendments to extend Regulation E coverage to prepaid accounts and to adopt provisions specific to such accounts, and to generally expand Regulation Z's coverage to overdraft credit features that may be offered in conjunction with prepaid accounts. The Bureau is generally adopting the rule as proposed, with certain modifications based on public comments and other considerations as discussed in detail in part IV below. This final rule represents the culmination of several years of research and analysis by the Bureau regarding prepaid products.

Scope. The final rule's definition of prepaid accounts specifically includes payroll card accounts and government benefit accounts that are currently subject to Regulation E. In addition, it covers accounts that are marketed or labeled as ''prepaid'' that are redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or that are usable at automated teller machines (ATMs). It also covers accounts that are issued on a prepaid basis or capable of being loaded with funds, whose primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct person-to-person (P2P) transfers, and that are not checking accounts, share draft accounts, or negotiable order of withdrawal (NOW) accounts.

The final rule adopts a number of exclusions from the definition of prepaid account, including for gift cards and gift certificates; accounts used for savings or reimbursements related to certain health, dependent care, and transit or parking expenses; accounts used to distribute qualified disaster relief payments; and the P2P functionality of accounts established by or through the United States government whose primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities.

Pre-acquisition disclosures. The final rule establishes pre-acquisition disclosure requirements specific to prepaid accounts. Under the final rule, financial institutions must generally provide both a ''short form'' disclosure and a ''long form'' disclosure before a consumer acquires a prepaid account. The final rule provides guidance as to what constitutes acquisition for purposes of disclosure delivery; in general, a consumer acquires a prepaid account by purchasing, opening, or choosing to be paid via a prepaid account. The final rule offers an alternative timing regime for the delivery of the long form disclosure for prepaid accounts acquired at retail locations and by telephone, provided certain conditions are met. For this purpose, a retail location is a store or other physical site where a consumer can purchase a prepaid account in person and that is operated by an entity other than the financial institution that issues the prepaid account.

The short form disclosure sets forth the prepaid account's most important fees and certain other information to facilitate consumer understanding of the account's key terms and comparison shopping among prepaid account programs. The long form disclosure, on the other hand, provides a comprehensive list of all of the fees associated with the prepaid account and detailed information on how those fees are assessed, as well as certain other information about the prepaid account program. The final rule also adopts specific content, form, and formatting requirements for both the short form and the long form disclosures.

The first part of the short form contains ''static'' fees, setting forth standardized fee disclosures that must be provided for all prepaid account programs, even if such fees are $0 or if they relate to features not offered by a particular program. The second part provides information about some additional types of fees that may be charged for that prepaid account program. This includes a statement regarding the number of additional fee types the financial institution may charge consumers; they must also list the two fee types that generate the highest revenue from consumers (excluding certain fees, such as those that fall below a de minimis threshold) for the prepaid account program or across prepaid account programs that share the same fee schedule. The final part of the short form provides certain other key information, including statements regarding registration and Federal Deposit Insurance Corporation (FDIC) deposit or National Credit Union Administration (NCUA) share insurance eligibility, and whether an overdraft credit feature may be offered in conjunction with the account. In addition, the final rule requires that short form disclosures for payroll card accounts and government benefit

[1] 79 FR 77102 (Dec. 23, 2014). *See also* Press Release, CFPB, *CFPB Proposes Strong Federal Protections for Prepaid Products* (Nov. 13, 2014), *available at http://www.consumerfinance.gov/newsroom/cfpb-proposes-strong-federal-protections-for-prepaid-products.* The Bureau had previously published an advance notice of proposed rulemaking (Prepaid ANPR) that posed a series of questions for public comment about how the Bureau might consider regulating GPR cards and other prepaid products. 77 FR 30923 (May 24, 2012).

accounts include, at the top of the form, a statement regarding alternative wage or benefit payment options.

The long form disclosure, in contrast, sets forth in a table all of the prepaid account's fees and their qualifying conditions, as well as certain other information about the prepaid account program. This includes, for example, more detailed information regarding FDIC or NCUA insurance eligibility and a separate disclosure for the fees associated with any overdraft credit feature that may be offered in conjunction with the prepaid account.

The final rule includes several model short form disclosures that offer a safe harbor to the financial institutions that use them, provided that the model forms are used accurately and appropriately. The final rule also includes one sample long form disclosure as an example of how financial institutions might choose to structure this disclosure.

The final rule also includes requirements to disclose certain information such as any purchase price or activation fee outside, but in close proximity to, the short form disclosure; disclosures required to be printed on the prepaid card itself; and short form and long form disclosure requirements for prepaid accounts with multiple service plans.

The final rule requires financial institutions to provide pre-acquisition disclosures in a foreign language if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in certain circumstances. The financial institution also must provide the long form disclosure in English upon a consumer's request and on its Web site where it discloses this information in a foreign language.

Access to account information. The final rule adopts an alternative to Regulation E's periodic statement requirement that permits financial institutions to make available to consumers certain methods for accessing information about their prepaid accounts in lieu of sending periodic statements. The final rule also adopts a requirement that financial institutions provide summary totals of the fees they have assessed against the prepaid account on a monthly and annual basis.

Limited liability and error resolution, including provisional credit. The final rule extends Regulation E's limited liability and error resolution requirements to all prepaid accounts, regardless of whether the financial institution has completed its consumer identification and verification process with respect to the account, but does not require provisional credit for unverified accounts. Once an account has been verified, the financial institution must comply with the provisional credit requirements, for both errors that occur prior to and after account verification, within the provisional credit timeframe.

Submission and posting of prepaid account agreements. Under the final rule, prepaid account issuers must submit their prepaid account agreements to the Bureau. The final rule also requires that prepaid account issuers publicly post on their own Web sites prepaid account agreements that are offered to the general public. Financial institutions must make any agreements not posted on their own Web sites available upon request for consumers who have prepaid accounts under those agreements.

Remittance transfers. The final rule makes several revisions to the rules governing remittance transfers in subpart B of Regulation E that are intended to continue the current application of those rules to prepaid products. Specifically, they clarify that for prepaid accounts other than payroll card accounts and government benefit accounts, the location of these accounts does not determine where funds are being sent to or from for purposes of application of the rules in subpart B. They also clarify that the temporary exception allowing insured institutions to use estimates when providing certain disclosures does not apply to prepaid accounts, unless the prepaid account is a payroll card account or government benefit account.

Overdraft credit features. The final rule amends Regulations E and Z generally to regulate prepaid accounts that offer overdraft credit features. Specifically, the final rule generally covers under Regulation Z's credit card rules any credit feature offered in conjunction with a prepaid account where the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner and credit can be accessed in the course of a transaction conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers. The final rule generally requires that such credit features be distinct from the asset portion of the prepaid account—structured as a separate credit account or a credit sub-account to the asset account—to facilitate transparency and compliance with various Regulation Z requirements. The final rule uses the term ''hybrid prepaid-credit card'' to refer to a prepaid card that can access both an overdraft credit feature that is subject to the Regulation Z credit card rules and the asset portion of a prepaid account.

An issuer may not extend credit via a negative balance on the prepaid account except in several limited circumstances where the credit is incidental and the issuer generally does not charge credit-related fees for that credit; in these circumstances, the incidental credit is not subject to Regulation Z. These exceptions for incidental credit cover situations where the issuer has a general established policy and practice of declining to authorize transactions when the consumer has insufficient or unavailable funds to cover the transaction but credit is nonetheless extended as a result of so-called ''force pay'' transactions, transactions that will not take the account negative by more than $10 (*i.e.,* a de minimis ''purchase cushion''), or certain transactions that are conducted while incoming deposits to the prepaid account are pending.

The final rule's provisions regarding hybrid prepaid-credit cards are largely housed in new Regulation Z § 1026.61. To effectuate these provisions and provide compliance guidance to industry, the final rule also amends certain other existing credit card provisions in Regulation Z. The final rule does not adopt the proposal's provisions that would have made certain account numbers into credit cards where the credit could only be deposited directly to particular prepaid accounts specified by the creditor.

The final rule subjects overdraft credit features accessible by hybrid prepaid-credit cards to various credit card rules under Regulation Z. For open-end products, this includes rules restricting certain fees charged in the first year after account opening, limitations on penalty fees, and a requirement to assess a consumer's ability to pay. In addition, the final rule requires issuers to wait at least 30 days after a prepaid account is registered before soliciting a consumer to link a covered credit feature to the prepaid account and to obtain consumer consent before linking such a credit feature to a prepaid account. The final rule permits issuers 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, and requires that issuers allow consumers to have at least 21 days to repay the debt incurred in connection with using such features. It also amends the compulsory use provision under Regulation E so that prepaid account issuers are prohibited from requiring

consumers to set up preauthorized electronic fund transfers (EFTs) to repay credit extended through an overdraft credit feature accessible by a hybrid prepaid-credit card.

Effective date. The final rule generally becomes effective on October 1, 2017. Financial institutions are not required to pull and replace prepaid account packaging materials prepared in the normal course of business prior to that date that do not comply with the final rule's disclosure requirements. The final rule also contains several additional provisions addressing notices of certain changes in terms and updated initial disclosures as a result of this final rule taking effect in certain circumstances, and for rolling compliance with certain access to account information requirements if financial institutions do not have readily accessible the data necessary to comply with the final rule's requirements as of October 1, 2017. The requirement that issuers submit their prepaid account agreements to the Bureau pursuant to § 1005.19(b) becomes effective on October 1, 2018, as described in § 1005.19(f).

II. Background

A. Prepaid Financial Products

Prepaid products—in various forms—have been 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.[2] Among other things, the study found that the number of prepaid card payments reached 9.2 billion transactions in 2012 (up from 5.9 billion in 2009).[3]

The U.S. market for prepaid products can largely be categorized into two general market segments: Closed-loop and open-loop products. The total amount of funds loaded onto open-loop and closed-loop prepaid products has grown significantly, from approximately $358 billion in 2009 to approximately $594 billion in 2014.[4] A consumer or other authorized party can add funds to both closed-loop and open-loop prepaid products; however, typically, consumers can only use funds stored on closed-loop prepaid products at designated locations (*e.g.,* at a specific merchant or group of merchants in the case of certain gift cards; within a specific transportation system in the case of transit cards). In contrast, consumers have more options with respect to how to spend funds held on open-loop prepaid products, because transactions made with these products are typically run on payment network rails (often through point-of-sale (POS) terminals, ATM networks, or both).[5] As discussed below, a general purpose reloadable (GPR) card is one type of reloadable, open-loop prepaid product. Other open-loop products are used by third parties to distribute funds to consumers, including payroll cards, cards for the disbursement of student loans or insurance proceeds, and cards used to disburse Federal and non-needs based State and local government benefits.[6]

Closed-loop and open-loop prepaid products are regulated by at both the Federal and State level. Regulation E, for example, currently contains protections for consumers who use payroll card accounts and certain government benefit accounts, as well as consumers who use certain gift cards and similar products.[7] However, the status of GPR cards and certain other newer prepaid products such as digital and mobile wallets is less clear under existing regulation. As discussed in greater detail throughout this notice, this final rule imposes a comprehensive regulatory regime for prepaid accounts to ensure that consumers who use them receive consistent protections. This part II.A provides a condensed discussion of the detailed background information contained in the proposal, which the Bureau considered and relied on in preparing this final rule.[8]

General Purpose Reloadable Cards

A GPR card is one of the most common and widely available forms of open-loop prepaid products. GPR cards, which can be purchased at retail locations as well as directly from financial institutions, can be loaded with funds through a variety of means and can be used to access loaded funds at POS terminals and ATMs, online, and often through other mechanisms as well. Accordingly, they increasingly can be used as substitutes for traditional checking accounts.[9]

The prevalence of GPR cards has grown rapidly. According to estimates by the Mercator Advisory Group, the amount of funds loaded onto GPR cards grew from under $1 billion in 2003 to nearly $65 billion in 2012.[10] 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 Mercator Advisory Group further projects that the total dollar value loaded onto GPR cards will grow annually by 5 percent through 2019, when it will exceed $117 billion.[11]

The Bureau notes that the top five GPR card programs (as measured by the total number of cards in circulation) have maximum balance amounts that vary significantly.[12] To the extent that the cards have a maximum balance cap, the range is between $2,500 and $100,000.[13] One of these top five GPR card programs does not have a maximum balance amount, but does have a monthly cash deposit limit of $4,000.[14]

Virtual GPR cards. Prepaid products are not all tied to a physical card or device. Some may exist only electronically; these virtual products are accessible and usable online or at a physical location through a mobile device such as a smartphone. To use these ''virtual GPR cards,'' consumers receive an account number or other information that they can then use to make purchases using a mobile application or other means. The use of GPR prepaid products not linked to a

[2] 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://www.frbservices.org/files/communications/pdf/general/2013_fed_res_paymt_study_detailed_rpt.pdf.*

[3] *Id.* at 37.

[4] Mercator Advisory Group, *Twelfth Annual U.S. Prepaid Cards Market Forecasts, 2015–2018,* at 8 (Dec. 2015) (Mercator 12th Annual Market Forecasts).

[5] Payment networks include Visa, MasterCard, American Express, and Discover; ATM networks include NYCE, PULSE, STAR, and Cirrus.

[6] As noted in the proposal, certain prepaid products are not reloadable. *See* 79 FR 77102, 77104 (Dec. 23, 2014).

[7] *See* §§ 1005.18, 1005.15, and 1005.20, respectively.

[8] *See* 79 FR 77102, 77103–77112 (Dec. 23, 2014).

[9] Throughout the supplementary information for this final rule, the term checking account generally also refers to credit union share draft accounts.

[10] Mercator Advisory Group, *Eleventh Annual U.S. Prepaid Cards Market Forecasts, 2014–2017,* at 13 (Nov. 2014).

[11] Mercator Advisory Group, *Thirteenth Annual U.S. Open-Loop Prepaid Cards Market Forecasts, 2016–2019,* at 9 (Sept. 2016) (Mercator 13th Annual Market Forecasts).

[12] *See* First Annapolis, *Chase Enhances Competitive Positioning of Liquid* (Sept. 2015), *available at http://www.firstannapolis.com/articles/chase-enhances-competitive-positioning-of-liquid*; *see also* American Express Serve® Prepaid Card Cardholder Agreement, *available at https://serve.com/intuit/pdf/ServeTemp_Card_Agreement.pdf.*

[13] *See* Green Dot Card Cardholder Agreement, *available at https://www.greendot.com/content/docs/Legacy(4–2012).pdf*; *see also* American Express Serve® Prepaid Card Cardholder Agreement, *available at https://serve.com/intuit/pdf/ServeTemp_Card_Agreement.pdf.*

[14] *See* Chase Liquid Agreement, *available at https://www.chase.com/content/dam/chasecom/en/debit-reloadable-cards/documents/chase_liquid_terms_conditions.pdf.*

physical card or device to store and transfer funds via the internet, text, or mobile phone application appears to be growing.[15]

GPR Card Functionality

Consumers generally purchase or acquire GPR cards at retail locations, over the telephone, or online. When buying a GPR card at a retail location, consumers typically pay an up-front purchase fee. A GPR card is usually loaded by the retailer at the time of purchase with funds provided by the consumer. Some GPR cards purchased at retail are activated at the time of purchase so that the card can be used immediately for POS purchases and potentially certain other types of transactions; other cards require the consumer to contact the financial institution or program manager online or by phone to activate the card before it can be used. However, in order to take advantage of all of the GPR card's features, including to make ATM withdrawals and to be able to reload the card, consumers are generally required to contact the financial institution or program manager in order to register the card. (Many financial institutions combine the activation and registration process for GPR cards.) After registration, financial institutions often send a permanent card embossed with the consumer's name that, once activated, replaces the temporary card the consumer acquired from the retailer. The process for acquiring GPR cards directly from the financial institution or program manager online or by telephone tends to be more streamlined; financial institutions typically do not charge an up-front purchase fee and registration is completed during the acquisition process before the consumer is mailed a physical card.

Registration is driven both by Bank Secrecy Act (BSA)[16] requirements and by the financial institution's desire to establish full communications and an ongoing relationship with its customers. In order for financial institutions to satisfy the BSA's Customer Identification Program (CIP) requirements, financial institutions typically require consumers 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) as part of the registration process.[17] The financial institution or program manager uses the information to verify the consumer's identity. If the consumer's identity cannot be verified, the card is not considered registered; the consumer can typically spend down the card balance at POS but cannot withdraw funds at an ATM and cannot reload the card.

GPR cards can generally be reloaded through a variety of means, including direct deposit of wages, pensions, or government benefits; cash reloads conducted at, for example, retail locations designated by the card issuer or program manager,[18] or by purchasing a ''reload pack'' at retail; transfer from another prepaid account, or a checking or savings account; or deposit of a check at a participating check-cashing outlet or via remote deposit capture.[19] Consumers can typically obtain cash from their GPR cards via ATM withdrawals, bank teller transactions, or by electing to obtain cash back from merchants through POS transactions using a personal identification number (PIN). Additionally, consumers can typically make purchases with their GPR cards wherever the payment network brand appearing on the card is accepted. A number of GPR card programs also offer an online bill pay function, which sometimes has a fee associated with it. Consumers can typically obtain updates regarding their GPR card's account balance (and, for some programs, recent transaction activity) via toll-free telephone calls to the financial institution or program manager, text messages, email alerts, the program's Web site or mobile application, at ATMs, or by requesting written account histories sent by mail. 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 also incur fees to obtain balance information at ATMs.

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 a 2012 study of consumer use of prepaid products by the Federal Reserve Bank of Philadelphia, the Bureau believes average cardholder costs for GPR and payroll cards range from approximately $7 to $11 per month, depending on the type and distribution channel of the account.[20] In a 2014 report, The Pew Charitable Trusts (Pew) estimated that the median consumer using one of the 66 major GPR cards it examined would be charged approximately $10 to $30 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.[21] 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.[22]

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, with cash withdrawals accounting for about one-third to one-half of the funds taken off a product, depending on the product. The study also concluded that prepaid cards are used primarily to purchase nondurable goods and noted that many of the products studied were also used to pay bills.[23]

The types of consumers who use GPR cards and their reasons for doing so vary. For consumers who lack access to more established products such as bank accounts and credit cards, GPR cards can be appealing because they are subject to less up-front screening by financial institutions. While CIP requirements for checking and savings

[15] *See, e.g.,* Mercator Advisory Group, *Consumers and Prepaid: Rising Use, Especially by Mobile,* at 16–18 (Dec. 2014).

[16] *See,* in part, 31 U.S.C. 5311 *et seq. See also* 31 CFR chapter X.

[17] *See* Bd. of Governors of the Fed. Reserve Sys., Fed. Deposit Ins. Corp., Nat'l Credit Union Admin., Office of the Comptroller of the Currency, Fin. Crimes Enforcement Network, *Interagency Guidance to Issuing Banks on Applying Customer Identification Programs to Holders of Prepaid Access Cards* (Mar. 21, 2016), *available at http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160321a1.pdf.* Among other things, the guidance clarified that a financial institution's CIP should apply to GPR cardholders if the GPR card is issued by the financial institution.

[18] *See, e.g.,* Green Dot Card Cardholder Agreement, *available at https://www.greendot.com/content/docs/CardholderAgreement-Legacy(4–2012).pdf.*

[19] The Bureau understands some financial institutions permit consumers to reload GPR cards via paper checks mailed to the financial institution or program manager.

[20] Stephanie Wilshusen et al., *Consumers' Use of Prepaid Cards: A Transaction-Based Analysis,* at 39 (Fed. Reserve Bank of Phila., Discussion Paper, 2012), *available at http://www.philadelphiafed.org/consumer-credit-and-payments/payment-cards-center/publications/discussion-papers/2012/D–2012-August-Prepaid.pdf* (2012 FRB Philadelphia Study). 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.

[21] The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards,* at 39 (Feb. 2014), *available at http://www.pewtrusts.org/en/research-and-analysis/reports/2014/02/06/consumers-continue-to-load-up-on-prepaid-cards* (2014 Pew Study).

[22] 2012 FRB Philadelphia Study at 6.

[23] *Id.*

accounts apply to GPR cards as well, banks and credit unions generally review information about prospective checking and savings account customers obtained from specialized reporting agencies that can reveal a prior history of involuntary account closure, unsatisfied balances, and other issues with prior account use. Even where financial institutions do not intend to provide overdraft services to a consumer, they may be motivated to evaluate potential checking account customers for credit risk more closely than for prepaid customers. For example, check deposits may be a more prevalent feature of checking accounts than prepaid accounts and, because a deposited check can be returned unpaid (in contrast to a cash deposit or load), a check deposit may present credit risk to a financial institution. With respect to credit cards, approvals are generally contingent on a consumer successfully navigating an underwriting process to determine whether an applicant is an appropriate credit risk. In contrast, most financial institutions do not engage in screening or underwriting GPR customers (aside from CIP) because the product involves little credit risk.

In light of these distinctions, it is not surprising that consumers who lack access to more established financial products such as bank accounts and credit cards consistently make up a sizeable segment of the consumer base that uses GPR cards on a regular basis. For example, a 2014 Pew survey found that 41 percent of prepaid card users did not have a checking account, and that 26 percent of the consumers in this group believed that they would not be approved for a checking account.[24] It also found that prepaid card users were much more likely to use an alternative financial product or service, such as a payday loan, compared to consumers in the general population (40 percent vs. 25 percent).[25] The survey also found that 33 percent of monthly users of open-loop prepaid products have never had a credit card.[26] A 2015 Pew survey suggested that unbanked prepaid card users tended to be less knowledgeable than consumers with bank accounts about whether their prepaid card had FDIC insurance and about liability limits if their card is lost or stolen.[27]

Consistent with Pew's findings, a 2013 survey by the FDIC found that approximately 33 percent of those who reported using a prepaid card in the 30 days prior to being surveyed were unbanked.[28] More broadly, the survey found that 19.7 percent of underbanked and 27.1 percent of unbanked households, as well as 33 percent of previously banked households,[29] reported having used such cards (compared with 12 percent reported use in the entire population).[30] The FDIC also found that while GPR card usage among all households had 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 to 27.1 percent in 2013.[31] The FDIC survey also found that prepaid card users were more likely than the general population to be young, single mothers, or disabled, and to have incomes below $50,000; they were less likely than the general population to be homeowners, white, have college degrees, and to be employed.[32]

For consumers with access to traditional financial products and services, GPR cards may be appealing as a limited-use product instead of as a transaction account substitute.[33] For example, 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.[34] 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 to help them better manage their funds. For example, a family might budget a fixed amount each month for dining out and put those funds on a GPR card, or parents may provide a GPR card, as opposed to a credit card for example, to a child at college to control the child's spending. Pew has found that the majority of both unbanked and banked GPR card users would like their cards to have a feature allowing them to put some of their card balances into savings and a budgeting tool that would track their spending in different categories automatically and alert them if they overspent.[35]

Additionally, for both unbanked and banked consumers, the desire to avoid overdraft services associated with checking accounts appears to motivate many consumers to choose GPR cards over checking accounts. The 2015 Pew Survey reports that most GPR prepaid card users would rather have a purchase denied than overdraft their accounts and incur an overdraft fee.[36] Its 2014 survey found that 41 percent of prepaid users have closed or lost a checking account due to overdraft fees or bounced check fees.[37] As discussed further below, in contrast to checking overdraft fees, which are often $35 per item,[38] GPR cards generally are not offered with an overdraft service nor other credit features, and the few exceptions appear to involve smaller fees.[39] Indeed, the Bureau has observed that many GPR cards are advertised as a ''safe'' or ''secure'' alternative to a

[24] The Pew Charitable Trusts, *Why Americans Use Prepaid Cards: A Survey of Cardholders' Motivations and Views,* at 7, 14 (Feb. 2014), *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets//prepaidcardssurveyreportpdf.pdf* (2014 Pew Survey). It appears that the prepaid products discussed in the report included GPR cards, payroll cards, and government benefit cards. The report excluded closed-loop prepaid products.

[25] *Id.* at 9.

[26] *See Id.* 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 applications denied.

[27] The Pew Charitable Trusts, *Banking on Prepaid: Survey of Motivations and Views of Prepaid Card Users,* at 10–12 (June 2015), *available at http://www.pewtrusts.org/en/research-and-analysis/reports/2015/06/banking-on-prepaid* (2015 Pew Survey).

[28] *See* Fed. Deposit Ins. Corp., *2013 FDIC National Survey of Unbanked and Underbanked Households,* at 31 (Oct. 2014), *available at https://www.fdic.gov/householdsurvey/2013report.pdf* (2013 FDIC Survey). The FDIC survey found, generally, that there are approximately 30 million unbanked and underbanked households in the United States. Like Pew, the FDIC found that unbanked and underbanked consumers are more likely than the general population to use open-loop prepaid products such as GPR cards. *Id.* at 4.

[29] Previously banked households are households that had a bank account in the past. The FDIC survey treats these households as a subset of unbanked households. 2013 FDIC Survey at 29.

[30] *Id.*

[31] *Id.*

[32] 2013 FDIC Survey at 46–47.

[33] 2014 Pew Survey at 7. It found that 59 percent of prepaid card users also have a checking account and that most prepaid card users also have experience using credit cards, with almost half having used a credit card in the past year.

[34] *See, e.g.,* 2014 Pew Survey at 1, 13.

[35] 2015 Pew Survey at 7.

[36] *Id.*

[37] 2014 Pew Survey at 8.

[38] As part of this rulemaking, the Bureau calculated the median checking account overdraft fee charged as of July 2014 among the 50 largest U.S. banks ranked by consumer checking balances at $35 per item. Nearly all banks 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 banks have higher overdraft fees that apply after a certain number of overdraft occurrences. However, the Bureau's analysis considered only the lowest-tier fees a consumer would encounter if de minimis or other policies do not preclude a fee. For banks that charge different amounts in different regions, Bureau staff considered pricing for the region where the bank is headquartered.

[39] *See, e.g.,* 2014 Pew Study at 4, 9–10.

checking account precisely because they do not offer overdraft services.

Based on the Bureau's market research and analysis, the Bureau believes that consumer acceptance of GPR cards will grow. It also believes that some consumers that currently use GPR cards may increasingly find that they no longer want or need to have traditional financial products and services such as a checking account or a credit card in addition to their GPR card as these products continue to evolve. 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 the ability to write checks using pre-authorized checks. Similarly, many GPR programs allow third parties to credit the GPR card account via ACH (*e.g.,* through direct deposit) and in more limited circumstances, to debit the GPR card account via ACH. 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 smart 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. The 2015 Pew Survey found that for both unbanked and banked GPR card users, more than half monitor their account balances through online access.[40] Lastly, as discussed above, 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.[41] Nevertheless, various factors continue to negatively affect consumers' ability to make meaningful comparisons.[42] Because card packaging is generally designed to be sold in retail stores, the ''J-hook package'' is no larger than 4 inches by 5.25 inches.[43] Thus, card packages have limited space in which to explain their product and disclose key features. Consumer groups have also criticized GPR product providers for making comparison shopping challenging by, for example, using different terms to describe similar fees and providing consumers with incomplete information about fees.[44] In addition to the size limitations on GPR card packaging, certain other aspects of purchasing GPR cards in retail settings may also pose obstacles to comparison shopping. For example, some retail locations may only offer one or a few types of GPR cards.[45] Some stores may only display prepaid products behind a register, requiring a consumer to ask to see each product individually, and stores may display GPR cards with or near closed-loop products such as prepaid cellular phone plan cards or gift cards. Store personnel may not be sufficiently familiar with the different products to respond accurately to consumer questions. When consumers are purchasing a GPR card along with groceries and convenience items, general time pressures may cause consumers to make decisions quickly and ask fewer questions.

All of these factors mean that consumers often purchase a card and load initial funds on it before they have an opportunity to review the full terms and conditions. Retail locations often cannot refund the cash loaded onto the card, and the Bureau believes that few consumers are likely to realize that refunds may be available from the GPR card programs. Thus, it is likely far more typical that consumers would spend down the funds initially loaded onto a GPR card and then discard it if they find it to be unsatisfactory as a long-term product. However, monthly maintenance fees may continue to accrue on spent-down cards. Moreover, the 2015 Pew Survey suggests that it can be particularly difficult for unbanked GPR card users to disentangle themselves from their cards. For example, Pew reported that more than 40 percent of unbanked GPR card users put their wages on their GPR cards through direct deposit and approximately 75 percent of them reload their cards regularly.[46]

Structure of Typical GPR Card Programs

GPR cards are generally provided by combinations of entities working together rather than by a single, vertically integrated entity operating all aspects of the GPR card program. Although a consumer may only interact with a single entity or limited number of entities, the Bureau believes that the presence of many different companies 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 a business partner, than those associated with a traditional vertically integrated checking or savings account program. The Bureau discusses the various entities that may be involved in a typical GPR card program below.

Entities involved in a typical GPR card program. One of the most important entities involved in a GPR card program is the prepaid card issuer, which is typically either a depository institution or credit union. Some of the major payment card networks' rules require that GPR cards bearing their brand be issued by banks or credit unions, although one payment card network that issues its own cards does so through a non-bank entity. Issuers also typically manage the underlying accounts that hold funds loaded onto the cards. Some banks and credit unions are actively involved in all aspects of their GPR card programs, serving as program manager as well as issuer. Other banks and credit unions act as issuers and provide sponsorship into specific payment card networks, but work with a non-bank entity that serves as the program manager. Program managers are generally responsible for designing, managing, marketing, and operating GPR card programs. The Bureau understands that variations in issuers' roles can be driven by the extent to which the program manager performs particular services by itself, as well as

[40] 2015 Pew Survey at 13.

[41] *See, e.g.,* Fed. Reserve Bank of St. Louis, *Cards, Cards and More Cards: The Evolution to Prepaid Cards,* Inside the Vault, at 1, 2 (Fall 2011), *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.''). *See also* 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.'').

[42] 2014 Pew Survey at 5, 6.

[43] 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.

[44] *See, e.g.,* Consumer Reports, *Prepaid Cards: How They Rate 2014,* at 5 (Nov. 2014), *available at https://consumersunion.org/wp-content/uploads/2014/11/Prepaid_Cards_How_They_Rate_2014.pdf.*

[45] Prepaid card providers can establish exclusive marketing arrangements that may prevent competitors' cards from being sold in the same store. *See, e.g.,* Press Release, Blackhawk Network, *Blackhawk Network, Safeway and Blackhawk extend exclusive prepaid card distribution agreement through 2019* (Mar. 7, 2014), *available at http://blackhawknetwork.com/blackhawk-comments-on-parent-company-safeways-spin-off-announcement/.* The press release announced that Blackhawk Network Holdings, Inc., a major prepaid product provider, extended its exclusive distribution arrangement with Safeway Inc. through 2019.

[46] 2015 Pew Survey at 5.

due to the particular features of a specific GPR card program.[47]

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.[48] Some program managers may exercise substantial control over and responsibility for GPR card programs. For example, some program managers maintain the databases that contain cardholder account and transaction histories. They also approve and decline transactions.[49] 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.[50]

Program managers often contract with other third-party service providers to perform specific functions for a GPR card program. To produce, market, and sell GPR cards, program managers often work with manufacturers that are responsible for printing and assembling the cards and associated packaging. 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, payment processors often provide many of the back-office processing functions associated with initial account opening (including those related to transitioning from temporary to permanent cards), transaction authorization and 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. Prepaid products including GPR cards differ from traditional checking or savings accounts 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 NCUA pass-through share insurance.

Revenue generation. The Bureau understands that GPR cards typically generate revenue through the up-front purchase price paid by the consumer where applicable, the assessment of various monthly maintenance and/or transactional fees, and interchange fees collected from merchants by the payment networks. The 2012 FRB Philadelphia Study found that interchange fees paid by a merchant or acquiring bank for the purpose of compensating an issuer for its involvement in prepaid programs account for more than 20 percent of issuer revenues in GPR programs and almost 50 percent of revenues in payroll program.[51] The Bureau understands that in most cases, publicly available details of how revenue is distributed and expenses are accounted among entities involved in the GPR card supply chain is sparse, although as discussed above, program managers generally reap the bulk of the revenue from GPR card programs. The Bureau believes that allocation of revenue and expenses likely varies across programs.

Prepaid Products Distributed and Funded by Third Parties

Consumers may also receive network-branded open-loop prepaid products from third parties such as employers, student aid sources, insurance companies, and government agencies that disburse funds to consumers by loading the funds into such accounts. These prepaid products are thus taking the place of distributions to the consumer via paper check, direct deposit into a traditional checking or savings account, or cash. The following discussion highlights some of the most common or fastest growing open-loop prepaid products onto which funds are loaded that are distributed to consumers by third parties.

Payroll cards. Payroll cards are the most common example of prepaid products used by third parties to distribute funds to consumers. In 2013, over 5 million payroll cards were issued, and $30.6 billion was loaded onto them.[52] According to the Mercator Advisory Group, payroll cards make up the second largest segment in the U.S. open-loop prepaid product market.[53] The total amount of funds loaded onto payroll cards is expected to grow on average 6 percent each year through 2019, when it will reach $44.6 billion.[54] While direct deposit into consumer accounts remains the most popular form of wage distribution overall,[55] the number of consumers who receive their wages on payroll cards surpassed the number of consumers paid by paper checks for the first time in 2015, and an estimated 12.2 million workers are expected to receive their wages on payroll cards by 2019, compared to an estimated 2.2 million workers who are expected to get paper checks.[56]

An employer generally works with a financial institution to set up a payroll card program. Among other things, the financial institution issues the payroll cards and holds the funds loaded into the payroll card accounts. Section 1005.10(e)(2) of Regulation E prohibits financial institutions and employers from requiring consumers to agree to have their compensation distributed via a payroll card as a condition of employment. As discussed in greater detail below, the Bureau is finalizing specific disclosure requirements as part of the short form disclosure, to make clear § 1005.10(e)(2)'s applicability to payroll card accounts. Where employees choose to participate in a payroll card program, the employer will provide the employee with a network-branded prepaid card issued by the employer's financial institution partner that

[47] 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 offer prepaid accounts (typically as a convenience to their customers or members).

[48] *See* Fumiko Hayashi & Emily Cuddy, *General Purpose Reloadable Prepaid Cards: Penetration, Use, Fees, and Fraud Risks,* at 6 (Fed. Reserve Bank of Kan. City, Working Paper No. RWP 14–01, Feb. 2014), *available at https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp14–01.pdf* (2012 FRB Kansas City Study).

[49] *Id.*

[50] *Id. See also* Aite Group LLC, *Prepaid Debit Card Realities: Cardholder Demographics and Revenue Models,* at 17 (Nov. 2013).

[51] 2012 FRB Philadelphia Study at 6.

[52] *See* Mercator Advisory Group, *Eleventh Annual U.S. Prepaid Cards Market Forecasts, 2014–2017,* at 32 (Nov. 2014).

[53] Mercator 13th Annual Market Forecasts at 28. The payroll card segment, as measured by the Mercator Advisory Group, is made up of wages paid to employees and 1099 workers using an employer-provided prepaid card.

[54] *Id.* at 29.

[55] Aite Group LLC, *Checkmate: U.S. Payroll Cards Trump Paper Checks,* at 5 (Apr. 2015) (reporting that according to the American Payroll Association, 90 percent of all employees currently receive their pay through direct deposit to checking accounts).

[56] *Id.* at 6.

accesses a subaccount assigned to the individual employee. 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, and may also be able to obtain cash back at 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 to receive wages for employees who may lack a traditional banking relationship, and that unbanked consumers may find the cards to be 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. Nonetheless, within the last 10 years, there have been increasing concerns raised about payroll cards, with specific focus on potentially harmful fees and practices associated with them. These problematic practices may impact low-income consumers disproportionately, as it has been reported that payroll cards are especially prevalent in industries that have many low-wage, hourly workers.[57]

As explained in greater detail below, the Bureau issued a guidance bulletin in September 2013 to remind employers that they cannot require their employees to receive wages on a payroll card and to explain 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.[58] Although it appears that certain industry stakeholders have worked to develop industry standards incorporating and building upon the guidance given in the bulletin,[59] 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.[60] 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.[61]

The Bureau additionally believes that payroll card accounts raise transparency issues beyond those addressed by its payroll card accounts guidance bulletin. Employers may offer a payroll card account when an employee starts employment, when it is likely that the question of how the employee is to be paid will be one of many 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. The 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. Employees who want to complete their hiring paperwork in a single setting may not take the opportunity to comparison shop. Separately, some industry observers 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, for instance by creating incentives to increase the fees on payroll card products.

Campus cards. Federal law permits Federal financial aid to be disbursed to students via prepaid products.[62] A number of colleges and universities partner with banks and program managers to market and often disburse student financial aid proceeds into network-branded open-loop prepaid products that are endorsed by those colleges and universities, as a potential alternative to direct deposit into a student or parent's existing checking account, prepaid account, or other means of disbursement. The total amount of funds loaded in the open-loop campus card segment grew by 15 percent in 2015, to $2.72 billion, and is forecasted to have an average annual growth rate of 10 percent through 2019, when it is forecasted to reach $3.98 billion.[63]

Similar to payroll card accounts, some have raised concerns about the ways in which students are encouraged to obtain an endorsed prepaid product and with the potential incentives created by 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 banks and program managers to provide debit and prepaid card services for students, approximately 20 percent of such agreements were for prepaid cards.[64] 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.[65]

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.[66] 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.[67] As discussed in greater detail below, the U.S. Department of Education (ED) issued a final rule in October 2015 that addresses a number of concerns with campus cards that the GAO described in its report.

Government benefit cards. Government entities also distribute

[57] Nat'l Consumer L. Ctr., *Rating State Government Payroll Cards,* at 5 (Nov. 2015), *available at http://www.nclc.org/images/pdf/pr-reports/payroll-card-report.pdf.*

[58] CFPB Bulletin 2013–10, *Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at http://www.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.*

[59] *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/.*

[60] *See, e.g.,* N.Y. St. Att'y Gen., Labor Bureau, *The Impact of Payroll Cards on Low-Wage Workers, available at http://www.ag.ny.gov/pdfs/Pinched%20by%20Plastic.pdf.*

[61] *See, e.g., http://paycard.americanpayroll.org/compliance-regulations* (listing the various State regulations that apply to payroll cards).

[62] *See* 34 CFR 668.164(c)(2) (treating certain Federal student aid payments disbursed via ''an account that underlies a stored-value card'' as direct payments to a student or parent).

[63] Mercator 13th Annual Market Forecasts at 16. These figures include campus cards used by colleges and universities, as well as K–12 institutions.

[64] U.S. Gov't Accountability Office, *GAO–14–91, College Debit Cards, Actions Needed to Address ATM Access, Student Choice, Transparency, a Report to the Chairman, Committee on Health, Education, Labor, and Pension, U.S. Senate,* at 8 (Feb. 2014), *available at http://www.gao.gov/assets/670/660919.pdf.* The GAO found that the rest of the agreements were for debit cards.

[65] *Id.* at 9.

[66] 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.*

[67] *Id.*

various funds onto prepaid products by partnering with financial institutions and program managers. In its latest annual report to Congress on the prevalence of prepaid card use in Federal, State, and local government-administered payment programs, the Board reports that a number of government entities now mandate that recipients receive payments electronically, through either a prepaid card or direct deposit.[68] The Board reported that government offices distributed $150 billion through prepaid cards in 2015.[69] The Federal government and various State governments may use prepaid products to distribute government benefits such as Social Security payments,[70] unemployment insurance benefits,[71] and child support payments, as well as a distinct set of disbursements called needs-tested benefits.

Most States offer a choice at least between direct deposit to a traditional checking or savings account or a prepaid product for the receipt of unemployment insurance benefits. However, the Bureau is aware that, in the recent past, several States have required the distribution of at least the first payment of such benefits onto prepaid cards.

State and local government programs for distributing needs-tested benefits are typically referred to as electronic benefit transfer (EBT) programs. 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). According to the Board, State agencies administering SNAP disbursed approximately $69 billion onto EBT cards in 2015.[72] As noted below in the discussion of relevant law, Regulation E does not apply to EBT programs.[73]

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.[74] The features of and fees charged in connection with these cards may vary.

Other open-loop prepaid cards distributed and funded by third parties. Open-loop prepaid cards are also used by some insurance providers to pay certain insurance claims such as claims related to a property or casualty loss and for emergency payments designed to help consumers get through immediate problems.[75] During the Bureau's pre-proposal 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 who may be unable to use or access traditional checking or savings accounts. The Mercator Advisory Group reports that the total amount loaded onto insurance cards is expected to grow at a rate of 3 percent per year through 2019, when loads are expected to exceed $13 billion.[76]

Similarly, taxpayers may direct tax refunds onto prepaid cards provided by tax preparers or arranged by government entities. These cards are typically open-loop and may or may not be reloadable. 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.[77] 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.[78]

As evidenced by the discussions above in connection with payroll and campus cards, prepaid products loaded by third parties can raise a number of consumer protection concerns. Some of these issues appear to be largely the same as GPR cards on items such as the lack of clear, consistent disclosures about fees and other important terms and conditions. Consumers may use these products as their primary transaction accounts, particularly when the products are loaded with all of the consumers' incoming funds (*e.g.,* wages, unemployment benefits, student loan proceeds). 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.

However, the Bureau believes that some consumer issues may be heightened or unique to particular categories of prepaid products loaded by third parties. For example, in selecting a GPR card, the consumer is making a distinct purchase decision; while some sales channels may be more convenient than others for comparison shopping, the consumer is in any event focused on the transaction as a standalone decision. Where a prepaid product is being provided to a consumer by a third party, however, the consumer may be deciding whether to accept the prepaid product in the course of another activity (such as starting a new job or school term, or dealing with a catastrophic event). Consumers may not understand the extent to which they can reject the product being offered, may not have a practicable option to comparison shop under the circumstances if they do not already have a transaction account to serve as an alternative, and may have concerns about upsetting an employer or other third party by rejecting the option. In addition, where there are revenue sharing arrangements in place, the third party may have a financial incentive to select a product offering with higher fees and to structure the sign-up process in a way that tends to increase participation. Further, the

[68] Bd. of Governors of the Fed. Reserve Sys., *Report to the Congress on Government Administered, General-Use Prepaid Cards,* at 3 (July 2016), *available at http://www.federalreserve.gov/publications/other-reports/files/government-prepaid-report-201607.pdf* (2016 FRB Government Prepaid Cards Report).

[69] *Id.* at 1.

[70] The U.S. Department of the Treasury (Treasury) has established the Direct Express program for the distribution of government benefits such as Social Security payments.

[71] *See, e.g.,* Nat'l Consumer Law Ctr., *2013 Survey of Unemployment Compensation Prepaid Cards, at* 3, 7 (Jan. 2013), *available at http://www.nclc.org/issues/unemployment-compensation-prepaid-cards.html* (noting that 42 States offer some form of prepaid card for distribution of unemployment compensation payments).

[72] 2016 FRB Government Prepaid Cards Report at 5.

[73] EFTA section 904(d)(2)(B); § 1005.15(a)(2).

[74] *See, e.g.,* Navy Cash/Marine Cash, (*http://fms.treas.gov/navycash/index.html*) and Eagle Cash, (*https://www.fiscal.treasury.gov/fsservices/gov/pmt/eagleCash/eagleCash_home.htm*). 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.

[75] Mercator 12th Annual Market Forecasts at 28.

[76] Mercator 13th Annual Market Forecasts at 26. The insurance category in the report measures funds loaded onto prepaid cards for disbursements of insurance settlements and for emergency payments.

[77] *See, e.g.,* Ventra Card, *https://www.ventrachicago.com/* (the city of Chicago's mass transit card has reloadable open-loop features). *See also* SEPTA, *http://www.septa.org/key/* (the city of Philadelphia announced that its mass transit card will also have reloadable open-loop features).

[78] As discussed in greater detail below in the section-by-section analysis of § 1005.2(b)(3)(ii), the final rule excludes from the definition of prepaid account those accounts that are directly or indirectly established through a third party and loaded only with qualified disaster relief payments.

Bureau understands many of the prepaid accounts that are loaded by third parties 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

A consumer may keep cash, debit and credit cards, GPR cards, and gift cards in a physical wallet or purse. ''Digital wallets'' and ''mobile wallets'' (*i.e.,* digital wallets that a consumer could access using a mobile device such as a smartphone) similarly store one or more of the consumer's payment credentials electronically.[79] These payment credentials may be accessed by the consumer through a Web site or mobile application. The Bureau understands that some, but not all, digital and mobile wallets allow a consumer to store funds in them directly or by funding a prepaid product, and draw down the stored funds. A 2015 survey by the Board suggests that digital wallets serve as an important funding source for mobile payments (*i.e.,* consumer payment for goods and services using mobile phones). The survey reported that 15 percent of mobile payment users reported that they used an account at a non-financial institution such as PayPal to fund their payments.[80]

Digital and mobile wallets have been marketed as allowing consumers to electronically transmit funds in multiple settings. Currently, such wallets can be used by a consumer for online purchases,[81] payments at brick-and-mortar retailers through, for example, contactless communication at the point of sale,[82] as well as person-to-business (*i.e.,* bill pay) and P2P transfers.[83] The Bureau understands that there may be significant variations in how funds are held in digital and mobile wallets and how payments are processed by such wallets. It also understands that payment processing by digital and mobile wallets is evolving quickly. For instance, some such wallets provide methods for accessing the ACH system to make a payment. A consumer might use such a digital or mobile wallet to pay for an online purchase, and the wallet would facilitate 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 or mobile wallet either by the consumer or the wallet provider, and then transferred to the ultimate payee. For example, it may be possible for a consumer to maintain a positive balance in the digital or mobile wallet through transfers from sources such as a bank account, a credit, debit, or prepaid card, or a P2P transfer. The consumer's digital or mobile wallet balance may be held in the name of the wallet provider. The Bureau expects that variations of digital and mobile wallets will continue to grow and observes that the methods described herein are a few of the funding options available in the current market. As discussed above, the application of EFTA and Regulation E to digital and mobile wallets has been less clear than the application of the statute and the regulation to prepaid products such as payroll card accounts and government benefit accounts.[84]

Credit Features, Overdraft Programs, and Prepaid Products

As described briefly above, most prepaid products as currently offered and marketed do not generally 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,[85] a linked line of credit,[86] access to a deposit advance product,[87] or other method of accessing formal credit features in connection with a prepaid product.[88] 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.[89] Prepaid account

[79] Aite Group LLC, *Money Goes Mobile* (May 2014).

[80] Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2015,* at 17 (Mar. 2015), *available at http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201503.pdf* (2015 FRB Consumers and Mobile Financial Services Survey). The survey was updated in 2016. The percentage of mobile payment users reported that they used an account at a non-financial institution such as PayPal to fund their payments appears to have held steady at 16 percent. *See* Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services Survey 2016,* at 17 (Mar. 2016), *available at http://www.federalreserve.gov/econresdata/and-mobile-financial-services-report-201603.pdf* (2016 FRB Consumers and Mobile Financial Services Survey).

[81] *See, e.g.,* Visa Checkout Terms of Service, *https://secure.checkout.visa.com/pages/terms?country=VUS&locale=en.*

[82] *See, e.g.,* Google Wallet Terms of Service, *https://wallet.google.com/termsOfService?type=BUYER&gl=US.*

[83] *See, e.g.,* Boost Mobile Wallet Terms of Service, *https://boostmobile.wipit.me/legal/terms.aspx.*

[84] Law360, *PayPal Customers Take Another Stab at $3.2M Class Deal* (Sept. 10, 2015), *available at http://www.law360.com/articles/701403/paypal-customers-take-another-stab-at-3–2m-class-deal.* The class action was brought by PayPal customers to sue PayPal for, among other things, alleged violations of EFTA in managing the customers' accounts.

[85] As discussed further below, overdraft services evolved in the context of checking accounts from ad hoc, discretionary programs in which financial institutions would sometimes cover particular transactions that would otherwise overdraw a checking account as a courtesy to the consumer rather than return the transaction and subject the consumer to a not sufficient-funds fee, merchant fees, and other negative consequences from bounced checks. Overdraft services fees are generally imposed on a per-transaction basis, and the financial institution takes the balance owed as soon as additional funds are deposited into the account. As explained below, the Board exempted overdraft services from regulation under TILA and Regulation Z, unless the payment of items that overdraw an account and the imposition of the charges for paying such items were previously agreed upon in writing. 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 from the consumer before imposing overdraft fees on ATM and one-time debit card transactions. *See* § 1005.17(b).

[86] 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 a 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 TILA 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.

[87] 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, *Payday and Deposit Advance Products: A White Paper of Initial Data Findings* (Apr. 24, 2013), *available at http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf*; *see also* FDIC and OCC Final Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70552 and 78 FR 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.

[88] 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.

[89] *See, e.g.,* Network Branded Prepaid Card Ass'n, *Prepaid Card Benefits, http://www.nbpca.com/en/What-Are-Prepaid-Cards/Prepaid-Card-Benefits.aspx* (last visited Oct. 1, 2016) (''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, C.E.O., NetSpend Holdings, Inc.) (''Our customers are typically working Americans who want control. . . .'').

balances can nonetheless be taken negative under certain limited circumstances, however. Specifically, so-called ''force pay'' transactions can occur when the prepaid account issuer either does not receive a request to authorize a transaction in advance or the final transaction amount is higher than the authorized amount, and the prepaid account issuer is required by card network rules to pay the transaction even though there are insufficient or unavailable funds in the prepaid account to cover the transaction at settlement. In such circumstances, prepaid issuers generally are not charging credit-related fees to consumers in connection with force pay transactions.

As also discussed above, according to the 2014 Pew Survey, 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.[90] The survey also reported that a slight majority of participants stated that one of the major reasons that they use prepaid products is that those products help those consumers control their spending.[91] Similarly, the Bureau's own focus groups also found that many consumers choose prepaid products because the products help them control their spending.[92]

It also appears that many consumers specifically seek to acquire prepaid products that do not offer overdraft 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. As discussed above, 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.[93] Relatedly, the survey reported that prepaid products are often used by consumers who cannot obtain a checking account due to bad credit or other issues.[94] 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.[95]

Apart from consumers' reasons for favoring prepaid products, regulatory factors may also have discouraged prepaid product providers from offering overdraft credit features in connection with their products. The Bureau understands that some prepaid issuers have received guidance from their prudential regulators that has deterred these financial institutions from allowing prepaid cards they issue to offer overdraft 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 offering of deposit advance products in connection with prepaid accounts.[96] Further, while a number of industry commenters to the Prepaid ANPR expressed interest in offering overdraft 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. In addition, as discussed further below, the Bureau understands that a Dodd-Frank Act provision affecting interchange fees on prepaid products with overdraft features seems to have further discouraged activity.[97] The Board found that among prepaid cards provided to consumers pursuant to government-administered payment programs, virtually all revenue from overdraft fees disappeared in 2014.[98]

The Bureau understands that currently, credit features are generally not being offered on prepaid accounts. When they are offered, the Bureau understands that they are typically structured as overdraft services,[99] which in some ways appear less expensive as well as more consumer friendly in other respects than their checking account analogs.[100] For example, the programs charge a per transaction fee each time the consumer incurs an overdraft (*e.g.,* one program charges $15), although the fees tend to be lower than those charged for overdraft services on checking accounts (median fee as of July 2014 was $35).[101] Along these lines, one recent study found that for consumers who overdraft, under the currently available programs, GPR cards are significantly less costly than checking accounts. For these consumers, the study found that the average total cost of checking accounts per month ranged between $86 and $112, while GPR cards' monthly costs ranged between $38 and $57.[102] In addition, some

[90] 2014 Pew Survey at 1.

[91] *Id.* 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).

[92] ICF Int'l, *ICF Report: Summary of Findings: Design and Testing of Prepaid Card Fee Disclosures,* at 5 (Nov. 2014), *available at http://files.consumerfinance.gov/f/201411_cfpb_summary-findings-design-testing-prepaid-card-disclosures.pdf* (ICF Report I).

[93] 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'').

[94] *Id.* at 8 (noting that 34 percent of prepaid consumers who ever had a checking account say they have closed a checking account themselves because of overdraft or bounced check fees, and 21 percent say they have had a financial institution close their account because of overdraft or bounced check fees.

[95] *See* ICF Report I at 5; *see also* 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).

[96] *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.*

[97] The debit card interchange restrictions and exemptions thereto are discussed in greater detail in part II.B below.

[98] *See* Bd. of Governors of the Fed. Reserve Sys., *Report to the Congress on Government Administered, General-Use Prepaid Cards,* at 9 (July 2015), *available athttp://www.federalreserve.gov/publications/other-reports/files/government-prepaid-report-201507.pdf* (2015 FRB Government Prepaid Cards Report). *See also* 2016 FRB Government Prepaid Cards Report at 8.

[99] The Bureau is aware of one prepaid account program where a linked credit service is structured as a line of credit.

[100] *See* Ctr. for Fin. Services Innovation, *CFSI Prepaid Industry Scorecard: Assessing Quality in the Prepaid Industry with CFSI's Compass Principles,* at 11 (March 2014), *available at http://www.cfsinnovation.com/CMSPages/GetFile.aspx?guid=b596e5ee-41fe-4d30–82e7-a9cbf407a716* (2014 CFSI Scorecard) (noting that only two in a survey of 18 GPR programs representing 25 percent of the market currently offers an opt-in overdraft service); CFPB, *Study of Overdraft Programs: A White Paper of Initial Data Findings,* at 14 (June 2013), *available at http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf* (CFPB Overdraft White Paper) (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.

[101] As part of this rulemaking, 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.

[102] Fumiko Hayashi et al., *Driver of Choice? The Cost of Financial Products for Unbanked Consumers,* at 20 (Fed. Reserve Bank of Kan. City, Working Paper No. 15–15, Nov. 2015), *available at https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp15–15.pdf* (the authors assumed that a consumer who overdrafts makes at most one overdraft transaction in a day and each overdraft transaction results in four consecutive days of negative balance in the consumer's account).

programs will waive the overdraft fee if the consumer repays the overdraft quickly (*e.g.,* within 24 hours) or if the amount by which the account is negative is only for a nominal amount (*e.g.,* $5 or $10). Further, some programs may 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 impose ''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.

Revenue from overdraft services does not appear to have significantly influenced the pricing structure of prepaid products overall, as has happened with traditional checking accounts as discussed further below. Indeed, as noted 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, 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.[103] As a result, banks and credit unions have developed checking accounts to have low (or sometimes no) up-front costs, to add services such as online bill pay [104] at no additional cost, and to rely on ''back end'' fees such as per transaction overdraft fees and non-sufficient funds (NSF) fees to maintain profitability. The Bureau believes that 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 payment networks.[105]

The Bureau understands that program managers of prepaid products with overdraft credit features have structured their products to comply with Regulation E's rules regarding overdraft services. Specifically, the Bureau understands that providers of overdraft programs on GPR and payroll card accounts purport to provide a disclosure similar to Model Form A–9 in appendix A to Regulation E.[106] Model Form A–9 is a model consent form that a financial institution may use to obtain a consumer's opt-in to overdraft services for a fee for one-time debit card or ATM transactions.[107]

The Bureau understands that prepaid products with overdraft credit features generally offer such features only to those consumers that meet specified criteria, such as evidence of the receipt 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 the provider will claim such funds for the purpose of repaying the overdraft.

B. Existing Regulation of Prepaid Products

Various Federal and State regulations apply to prepaid products. With respect to Federal regulation, there are several Federal regulatory regimes, including those regarding consumer protection, receipt of Federal payments, interchange fees, financial crimes, and Federal student aid disbursement, that apply to some or all types of prepaid products. Some of the most relevant applicable Federal laws and regulations include EFTA and Regulation E; Treasury's rule governing the receipt of Federal payments on prepaid cards; [108] the Board's Regulation II on debit card interchange and routing; [109] the Financial Crime Enforcement Network's (FinCEN) prepaid access rule; [110] and ED's Cash Management Regulation.[111]

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, as discussed in greater detail below, both the FDIC and the NCUA have set criteria regarding how prepaid products may qualify for, as applicable, pass-through deposit (or share) insurance. In addition, the Office of the Comptroller of the Currency (OCC) has a bulletin that provides guidance to depository institutions under its supervision with respect to how to assess and manage the risks associated with prepaid access programs.[112] However, as the Bureau noted in the proposal, it 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 EFTA and Regulation E.

EFTA and Related Provisions in 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.'' EFTA's primary objective is ''the provision of individual consumer rights.'' [113] Congress also empowered the Board to promulgate regulations

[103] According to information supplied to the Bureau as part of its large bank overdraft study and reported in the CFPB 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.

[104] Such bill pay services may include not only electronic payments through the ACH network, but also manual generation of checks authorized through the bank or credit union's online bill pay portal. *Id* at 12.

[105] For example, in both 2013 and 2014, one major program manager derived approximately 60 percent of its operating revenue from cash-reload fees and interchange fees. *See* Green Dot Corp., 2014 Annual Report, at 29 (2015), *available at http://phx.corporate-ir.net/phoenix.zhtml?c=235286&p=irol-reportsAnnual; see also Green Dot Corp.,* 2015 Annual Report, at 30 (2016), *available at http://phx.corporate-ir.net/phoenix.zhtml?c=235286&p=irol-reportsAnnual.*

[106] The Bureau understands that prepaid 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.

[107] As discussed in greater detail below, the Bureau reviewed publicly available account agreements for prepaid products that appeared to meet the Bureau's proposed definition of the term ''prepaid account'' and found that some programs' agreements stated 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* CFPB, *Study of Prepaid Account Agreements,* at 24–25 (Nov. 2014), *available at http://files.consumerfinance.gov/f/201411_cfpb_study-of-prepaid-account-agreements.pdf* (Study of Prepaid Account Agreements). However, the Bureau does not believe such fees are typically charged.

[108] 75 FR 80335 (Dec. 22, 2010).

[109] 12 CFR part 235.

[110] 76 FR 45403 (July 29, 2011).

[111] 80 FR 67126 (Oct. 30, 2015).

[112] 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/-27.html.*

[113] *See* Public Law 95–630; 92 Stat. 3728 (1978).

implementing EFTA.[114] 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.[115]

The regulations first promulgated by the Board to implement EFTA now reside in subpart A of Regulation E.[116] These rules provide a broad suite of protections to consumers who make 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.[117] 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.[118] 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.[119]

For covered accounts, Regulation E mandates that consumers receive certain initial disclosures, in writing and in a form that the consumer can keep.[120] 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.[121] Regulation E also sets forth substantive provisions on error resolution and imposes limits on a consumer's liability for unauthorized EFTs.[122] Moreover, Regulation E contains, among other things, provisions specific to periodic statements (which generally must be provided in writing),[123] the issuance of access devices,[124] preauthorized EFTs and compulsory use,[125] overdraft services,[126] and ATM disclosures.[127]

As discussed in greater detail in the proposal,[128] between 1994 and 2010, the Board amended Regulation E a number of times to add consumer protection for certain prepaid and other stored-value products. First, the Board adopted consumer protections in the mid 1990s for accounts used to distribute benefits for Federally-administered government benefit programs and non-needs tested State and local government benefit programs, such as employment-related ones.[129] As noted in the proposal, the Board's original rule included needs-tested State and local electronic benefit transfer programs (*e.g.,* benefits such as those provided under SNAP and the Aid to Families with Dependent Children program),[130] but Congress subsequently enacted legislation that 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.'' [131] The Board issued updated rules in 1997.[132]

In the mid 2000s, the Board expanded Regulation E to provide specific protections for prepaid products that are payroll card accounts established by an employer for providing an employee's compensation on a regular basis.[133] The Payroll Card Rule, among other things, brought payroll card accounts within the definition of account in § 1005.2(b).[134] The Board also tailored certain general Regulation E requirements to the payroll context. For example, the Board allowed providers of payroll card accounts to avoid the general requirement to provide written periodic statements, 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)).[135] Related provisions in § 1005.18(c) modify other requirements of Regulation E with respect to payroll card accounts, including 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.

More recently, the Board adopted a rule in 2010 to implement certain sections of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act) [136] applicable to gift cards, gift certificates, and certain types of general-use prepaid cards that are marketed or labeled as gift cards (the Gift Card Rule).[137] Although the Credit CARD Act explicitly gave the Board the discretionary authority to apply the majority of Regulation E's protections, including provisions regarding periodic statements, liability for unauthorized transactions, and error resolution to covered products,[138] the Board chose only to implement specific statutory provisions governing expiration dates and dormancy or inactivity fees.[139]

The Board considered whether to regulate GPR cards under EFTA and Regulation E several times, both in the course of promulgating these other amendments and independently. For example, when the Board initiated

[114] EFTA section 904(a).

[115] Public Law 111–203, section 1084, 124 Stat. 2081 (2010) (codified at 15 U.S.C. 1693a *et seq.*). *See also* Dodd-Frank Act section 1061(b); 12 U.S.C. 5581(b).

[116] 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 described as residing in 12 CFR part 1005 originally were contained in 12 CFR part 205.

[117] § 1005.3(b)(1).

[118] 44 FR 18468, 18480 (Mar. 28, 1979).

[119] § 1005.2(b)(1).

[120] § 1005.4(a)(1).

[121] *See generally* § 1005.7(b).

[122] *See* §§ 1005.6 and 1005.11.

[123] § 1005.9(b).

[124] § 1005.5. 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).

[125] § 1005.10.

[126] § 1005.17.

[127] § 1005.16. Since the transfer of authorities, the Bureau has amended Regulation E in two substantive respects. First, the Bureau added consumer protections to Regulation E in new subpart B for certain international fund transfers. §§ 1005.30 through 1005.36. Additionally, the Bureau amended Regulation E with respect to certain rules pertaining to ATM fee notices. 78 FR 18221 (Mar. 26, 2013).

[128] 79 FR 77102, 77113–14 (Dec. 23, 2014).

[129] *See* current § 1005.15.

[130] 59 FR 10678 (Mar. 7, 1994).

[131] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, 110 Stat. 2105 (1996).

[132] 62 FR 43467 (Aug. 14, 1997).

[133] 71 FR 51437, 51438 (Aug. 30, 2006). The Board proposed the rule in 2004. 69 FR 55996 (Sept. 17, 2004). The Payroll Card Rule is codified in § 1005.18.

[134] 71 FR 51437, 51438 (Aug. 30, 2006).

[135] *See* § 1005.18(b).

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

[137] § 1005.20.

[138] Credit CARD Act section 401; EFTA section 915(d)(1). The Gift Card Rule only covers certain general-use prepaid cards. Consistent with the Credit CARD Act, 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 Credit CARD Act, 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).

[139] *Id.*

rulemaking in 1996 to amend its 1994 rule on government benefit accounts to exclude needs-tested programs, it took notice that prepaid cards (at the time referred to as stored-value cards) were beginning to be used by more consumers. The Board explained its belief that facts supported the determination that ''accounts'' under Regulation E would include stored-value accounts and sought comment on whether to adopt rules specific to prepaid financial products (other than government benefit accounts) pursuant to its authority under EFTA and noted pending legislation in Congress that would address stored-value cards.[140] 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.[141] The Board implemented the directive and published its findings in March 1997. It found, among other things, that the market for stored-value products was evolving rapidly and was not yet ripe for regulation.[142] The Board did not finalize its 1996 proposal on stored-value.

The Board again considered whether to regulate stored value cards in the course of issuing the Payroll Card Rule, but decided to focus solely on payroll card accounts because at that time they were more often used as transaction account substitutes than were other types of prepaid products.[143]

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).[144] 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, must be set up to meet the requirements for FDIC or NCUA pass-through insurance, and must not have an attached line of credit or loan feature that triggers automatic repayment from the card account. Additionally, 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.[145]

Based on Bureau research and as explained in the proposal, the Bureau believes that many GPR card providers have chosen to structure their prepaid products generally to comply with the FMS Rule, rather than tailoring compliance only for those accounts that actually receive Federal payments.[146] For example, if, prior to the FMS Rule, a prepaid provider did not maintain error resolution procedures with respect to its prepaid products (or maintained procedures different from Regulation E's error resolution regulations), the provider had to either adjust its processes to provide consumers who receive Federal payments with Regulation E's error resolution rights or ensure that their prepaid products do not receive Federal payments. Rather than provide two different error resolution regimes for individual customers, many providers have opted to apply the same procedures to all cards on their systems.

Pass-Through Deposit (or Share) Insurance

Both the FDIC and NCUA have special rules regarding how the deposit or share insurance they provide generally applies to funds loaded onto prepaid products that are held in pooled accounts at banks and credit unions, as applicable.[147] In the case of the FDIC, 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.[148] First, the account records of the insured depository institution must disclose the existence of the agency or custodial relationship.[149] 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).[150] [151]

Similarly, NCUA regulations generally require that the details of the existence of a relationship which may provide a basis for additional insurance and the interest of other parties in the account must be ascertainable either

[140] 61 FR 19696 (May 2, 1996); H.R. 2520, 104th Cong., § 443; S. 650, 104th Cong., § 601 (1995). Among the provisions considered in the 1996 proposal on stored-value, the Board proposed to extend Regulation E's error resolution provisions to stored-value accounts and provide a periodic statement alternative for such accounts similar to what was adopted for government benefit cards in 1994. The Board also noted pending legislation in Congress that would address stored-value cards.

[141] Public Law 104–208, 110 Stat. 3009 (1996).

[142] 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.

[143] 71 FR 51437, 51441 (Aug 30, 2006). Taking stock of the market 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.'' *Id.* 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.'' 71 FR 1473, 1475 (Jan. 10, 2006). At the time, the Board viewed GPR cards as ''generally designed to make one-time or a limited number of payments to consumers and . . . not intended to be used on a long-term basis.'' *Id.*

[144] 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.

[145] 31 CFR 210.5(b)(5)(i).

[146] In issuing the FMS Rule, Treasury noted that it expected prepaid card issuers to comply with the FMS Rule (and thus provide Regulation E payroll card protections) to ensure that their products remain eligible to receive Federal payments. 75 FR 80335, 80338 (Dec. 22, 2010).

[147] FDIC deposit insurance generally 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). *See, e.g., http://www.fdic.gov/deposit.* The FDIC also has resources for consumers about pass-through deposit insurance for prepaid cards. *See fdic.gov/deposit/deposits/prepaid.html.* The NCUA administers the National Credit Union Share Insurance Fund (NCUSIF) for the purpose of providing insurance to protect deposits of credit union members of insured credit unions. *See, e.g., http://www.ncua.gov/DataApps/Pages/SI–NCUA.aspx.*

[148] FDIC General Counsel Opinion No. 8, *Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms,* 73 FR 67155 (Nov. 13, 2008), internal citations omitted.

[149] This requirement can be satisfied by opening the account under a title such as the following: ''ABC Company as Custodian for Cardholders.'' *See id.* at 67157.

[150] *Id.*

[151] The FDIC has also issued guidance on the application of requirements for brokered deposits as applied to prepaid cards. *See, e.g.,* FDIC, Identifying, Accepting and Reporting Brokered Deposits Frequently Asked Questions (updated June 2016), *available at https://www.fdic.gov/news/news/financial/2016/fil16042b.pdf.*

from the records of the credit union or the records of the member maintained in good faith and in the regular course of business.[152]

The Bureau believes that most prepaid products subject to this final rule are set up to be eligible for FDIC or NCUA pass-through insurance. As discussed in greater detail below in the section-by-section analysis of § 1005.18(b)(2)(xi), this final rule requires a financial institution to indicate on the short form disclosure required pursuant to § 1005.18(b)(2) whether a prepaid account is eligible for FDIC or NCUA pass-through insurance.

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.[153] The statute also addresses prepaid cards that operate on debit card networks. Specifically, 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 proportional to the cost incurred by the issuer. The statute also provides certain exemptions from the interchange fee limitations for certain cards, including in section 920(a)(7)(A) an exemption for general-use reloadable prepaid (and debit) cards provided to a consumer pursuant to government-administered payment programs and for certain GPR 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. Thus, interchange fees for transactions made with prepaid cards meeting the criteria for the statutory exemptions are generally not subject to the fee restrictions of EFTA section 920(a). However, the statute also provides a carveback that rescinds the exemption if certain fees, such as an overdraft fee, may be charged with respect to a card listed in section 920(a)(7)(A). There is no such carveback for the cards of issuers with total assets below $10 billion, however. The statute uses the same definition of general-use prepaid card as the Credit CARD Act.[154] 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.[155]

FinCEN's Prepaid Access Rule

FinCEN, a bureau of the Treasury, regulates prepaid products pursuant to its mission to safeguard the financial system from illicit use, combat money laundering, and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. 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).[156] The rule regulates prepaid access in a number of ways, including requiring providers or sellers 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. The customer identification and verification requirements for providers and sellers of prepaid access under this rule are largely similar to the CIP requirements for banks and credit unions. These BSA requirements are similar to those that apply to other categories of money services businesses.[157] However, consumer protection is not the focus of FinCEN's rules.

Department of Education's Cash Management Regulations

ED, among other things, regulates the disbursement of Federal financial aid by colleges and universities. In October 2015, it adopted a final rule that amends its cash management regulations by setting forth new criteria that apply to colleges that partner with vendors to distribute Title IV funds and/or sponsor or directly market accounts to their students.[158] Among other things, the rule prohibits colleges and universities that receive Federal financial aid from requiring students or parents to open a certain account into which student aid funds are deposited. Additionally, colleges and universities must provide students with a list of account options that the student may choose from to receive the student's aid disbursement. Each option must be presented neutrally and the student's preexisting bank account must be listed as the first and most prominent option with no account preselected. Further, the final rule bans point-of-sale and overdraft fees on accounts, including prepaid card accounts, that are directly marketed to students by a financial institution with which the student's college or university has an arrangement to disburse Federal financial aid on behalf of the post-secondary institution. Moreover, the final rule requires that college-sponsored accounts provide students with reasonable access to surcharge-free ATMs and deposit insurance.

As discussed in greater detail in the Prepaid Proposal and noted above, some colleges and universities partner with third parties to disburse financial aid proceeds into network-branded open-loop prepaid products endorsed by the colleges and universities, and questions have been raised about revenue sharing between the colleges and universities and these third parties.[159] Indeed, in its final rule, ED stated its belief that the new regulations are warranted because of the numerous concerns that have been raised about the practices of certain colleges and universities and third parties with respect to the distribution of Federal student aid. These practices include implying to students that they must sign up for certain accounts to receive Federal student aid and charging students onerous, confusing, or unavoidable fees in order to access student aid funds or otherwise use the account.[160]

[152] 12 CFR 745.2(c)(2).

[153] 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/-/media/richmondfedorg/publications/research/economic_quarterly/2012/q3/pdf/wang.pdf.*

[154] EFTA section 920(c)(2)(B).

[155] 76 FR 43394 (July 20, 2011); 76 FR 43478 (July 20, 2011); *amended by* 77 FR 46258 (Aug. 3, 2012).

[156] 76 FR 45403 (July 29, 2011). 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).

[157] 76 FR 45403, 45419 (July 29, 2011).

[158] 80 FR 67126 (Oct. 30, 2015).

[159] *See* 79 FR 77102, 77109 (Dec. 23, 2014).

[160] *See, e.g.,* 80 FR 67126, 67129, 67179 (Oct. 30, 2015).

State Laws

As discussed in greater detail in the proposal, 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. For example, in 2013, Illinois imposed pre-acquisition, on-card, and at-the-time-of-purchase disclosure requirements on ''general-use reloadable prepaid cards.'' [161] Also 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.[162]

Further, many States have money transmitter laws that may apply to prepaid product providers. The laws vary by State but generally require a company to be licensed and to post a surety bond to cover accountholder losses if it becomes insolvent. Most States further require that the companies hold high-grade investments to back the money in customer accounts. But as noted in the proposal, 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.[163]

C. Existing Regulation of Credit Products and Overdraft Services Offered in Connection With Transaction Accounts

As discussed further below, this final rule sets forth certain requirements that apply to overdraft credit features offered in connection with prepaid accounts. In crafting a regime to apply to credit accessed by prepaid cards, the Bureau has been conscious of existing regimes for regulating overdraft lines of credit (where there is a written agreement to pay overdrafts) generally under TILA and its implementing Regulation Z and overdraft services in the context of checking accounts (where there is no written agreement to pay overdrafts) under EFTA and Regulation E. Such overdraft services are exempt from Regulation Z but subject to certain parts of Regulation E.

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 TILA 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,'' to ''avoid the uninformed use of credit,'' and ''to protect the consumer against inaccurate and unfair credit billing and credit card practices.'' [164] TILA defines 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.[165]

Congress has amended TILA on several occasions to provide consumers using certain types of credit products with additional protections. The Fair Credit Billing Act (FCBA),[166] enacted in 1974, added a number of substantive protections for consumers who use open-end credit [167] or use credit cards subject to TILA.[168] 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,[169] 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.[170] 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.[171] In 1988, Congress amended TILA through the Fair Credit and Charge Card Disclosure Act, which required issuers of credit cards and charge cards to provide certain disclosures at the time of application and solicitation.[172]

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.[173] The Credit CARD Act, which amended TILA and EFTA, 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

[161] IL SB 1829 (2013), Public Act 098–0545, *codified at* 205 Ill. Comp. Stat. 616/10 and 616/46. The Illinois law defines ''general use reloadable card'' as, among other things, issued for consumer use; can be reloaded; is open-loop; and not marketed or labeled as a gift card or gift certificate. 205 ILCS 616/10.

[162] CA A 1820 (2013), ch. 557, *codified at* Cal. Unemp. Ins. Code § 1339.1 and Cal. Welf. & Inst. Code § 11006.2. Similar to the FMS Rule, this law includes provisions requiring that, among other things, such accounts to be set up to be eligible for pass-through deposit or share insurance, not be attached to any credit or overdraft feature that is automatically repaid from the account after delivery of the payment, and compliance not only with the Payroll Card Rule (or other rules subsequently adopted under EFTA that apply to prepaid card accounts). *See also* CA A 2252 (2014), ch. 180, *codified at* Cal. Fam. Code § 17325 (extending similar protections to cards used for distribution of child support payments).

[163] *See, e.g.,* The Pew Charitable Trusts, *Imperfect Protection—Using Money Transmitter Laws to Insure Prepaid Cards* (Mar. 2013), *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2013/.pdf.*

[164] 15 U.S.C. 1601(a).

[165] 15 U.S.C. 1602(f). The term creditor in Regulation Z, set forth in § 1026.2(a)(17)(i), 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.

[166] Public Law 93–495, 88 Stat. 1511 (1974).

[167] 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).

[168] Public Law 93–495, 88 Stat. 1511 (1974).

[169] 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 the model forms in appendix G–10 to Regulation Z and must set forth certain fees, interest rates, transaction charges, and other required charges.

[170] *See* § 1026.2(a)(15)(i).

[171] *See Gardner* v. *Montgomery County Teachers Fed. Credit Union,* 864 F.Supp.2d 410 (D. Md. 2012) (providing an overview of the FCBA's no offset provision).

[172] A charge card is a credit card on an account for which no periodic rate is used to compute a finance charge. § 1026.2(a)(15)(iii).

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

year after an account is opened, and limits both the instances in which issuers can charge ''back-end'' penalty fees when a consumer makes a late payment or exceeds his or her credit limit and the amount of such fees. Additionally, the Credit CARD Act restricts the circumstances under which issuers can increase interest rates on credit card accounts 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 a specific credit-related protection in that statute. 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.'' [174] A preauthorized EFT is an EFT 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, to repay 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 where there is a written agreement to pay overdrafts generally are subject to certain disclosure requirements under Regulation Z and certain provisions of the FCBA. The Board, however, exempted overdraft lines of credit from the compulsory use provision, as discussed in more detail below). The Board also exempted overdraft lines of credit accessed by a debit card from the Credit CARD Act provisions.[175]

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 check transactions for which consumers lacked funds in their deposit accounts rather than to return the transactions and subject consumers to a 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 when it enacted TILA, the Board in issuing Regulation Z in 1969 carved financial institutions' overdraft programs (also then commonly known as ''bounce protection programs'') out of the new regulation.[176] 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. Specifically, the Board exempted informal bounce protection programs but subjected overdraft lines of credit to Regulation Z when the creditor imposes a finance charge.[177]

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.[178] 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.[179] 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.'' [180]

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 EFTs. 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.[181] In adopting this exception, 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.'' [182]

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

[174] EFTA section 913(1). As implemented in Regulation E, this provision (§ 1005.10(e)(1)) 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.''

[175] 75 FR 7658 (Feb. 22, 2010).

[176] 34 FR 2002 (Feb. 11, 1969). *See also, 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) (providing 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).

[177] 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).

[178] Public Law 96–221, sec. 601, 94 Stat. 132; 45 FR 80648 (Dec. 5, 1980).

[179] 45 FR 80648, 80657.

[180] 46 FR 20848, 20855 (Apr. 7, 1981).

[181] *See* § 1005.10(e)(1).

[182] 46 FR 2972, 2973 (Jan. 13, 1981).

using the major payment networks (and thus most merchants could accept them).[183] 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.[184] These debit cards offered acceptance at all merchants that honored payments from the major payment networks, such as internet retailers.[185]

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.[186] 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 chances 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).[187] Over time, revenue from overdraft increased and began to influence significantly the overall pricing 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 with no monthly fees) as discussed above.[188]

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 OCC released an interpretive letter expressing concern about overdraft protection services.[189] The letter noted that overdrafts are 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.[190]

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.[191] The Board did not modify the Regulation Z exemptions when it issued final rules in 2003,[192] but proposed revisions to Regulation DD (which implements the Truth in Savings Act (TISA)) 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.[193] 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.[194]

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 annual percentage rate (APR) that is calculated based on overdraft fees without corresponding benefits to consumers in better understanding the costs of credit. The Board noted that consumer advocates stated that overdraft services compete with traditional credit products—open-end lines of credit, credit cards, and short-term closed-end loans—all of which are covered under TILA and Regulation Z and provide consumers with the cost of credit expressed as a dollar finance charge and an APR. The Board explained that these commenters believed TILA disclosures would enhance consumers' understanding of the cost of overdraft services and their ability to compare costs of competing financial services. 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.[195]

In February 2005 (prior to the Board having finalized the Regulation DD

[183] *See* R. Borzekowski et al., *Consumers' Use of Debit Cards: Patterns, Preferences, and Price Response,* at 2 (Fed. Reserve Board, Apr. 2006), *available at http://www.federalreserve.gov/pubs/feds/2006/200616/200616pap.pdf* (noting that, as of 2006, ''[a]nnual 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 U.S. 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.

[184] Fumiko Hayashi, *The New Debit Card Regulations: Initial Effects on Networks and Banks,* Fed. Reserve Bank of Kan. City Econ. Rev., at 83 chart 2 (4th quarter 2012), *available at https://www.kansascityfed.org/publicat/econrev//12q4Hayashi.pdf.* 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).

[185] See *generally* CFPB Overdraft White Paper at 11–17 (explaining growth of debit card transactions from consumers' deposit accounts).

[186] *Id.* at 16.

[187] *Id.* at 11–12.

[188] *Id.* at 16–17.

[189] Office of the Comptroller of the Currency, Interpretive Letter No. 914, *3rd Party Program,* (Aug. 3, 2001), *available at http://www.occ.gov/static/interpretations-and-precedents/sep01/int914.pdf.*

[190] *Id.*

[191] 67 FR 72618, 72620 (Dec. 6, 2002).

[192] 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).

[193] 69 FR 31760 (June 7, 2004).

[194] *Id.* at 31761.

[195] 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. *Id.* 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).

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.[196] The purpose of the Joint Guidance was to assist insured banks in the responsible disclosure and administration of overdraft programs. The agencies were concerned that the banks failed to clearly disclose the terms and conditions of the programs, including the fees associated with them and that consumers might have been misled.[197]

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.'' [198] 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.'' [199] 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 NCUA and the now-defunct Office of Thrift Supervision proposed to exercise their authority under section 5 of the Federal Trade Commission Act (FTC Act) [200] 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.[201] 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 the year to date.[202] The Board finalized portions of the Regulation DD proposal in January 2009.[203] In addition, although the three agencies did not finalize their FTC Act proposal, the Board ultimately adopted an opt-in requirement for ATM and one-time debit card 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 accounts in Regulation E,[204] 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.'' [205] The rule did not discuss GPR cards, which as noted above, the Board had not expressly subjected to Regulation E coverage.

Following the adoption of the Board's overdraft opt-in rule, the FDIC expanded on the previously issued Joint Guidance via a Financial Institution Letter to reaffirm its existing supervisory expectations with respect to overdraft payment programs generally and provide specific guidance with respect to automated overdraft payment programs.[206] 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.[207] The OCC withdrew this proposed guidance in 2013.[208]

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. In early 2012, the Bureau issued a Request For Information 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.[209] In response, the Bureau received over 1,000 comments. The Bureau 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 the CFPB Overdraft White Paper, noted above, and a data point in July 2014.[210] The Bureau is engaged in pre-rule making activities to consider potential regulation of overdraft services on checking accounts.[211] As part of its preparations, the Bureau has begun consumer testing initiatives related to the opt-in process set forth in current Regulation E.[212]

Other Relevant Federal Regulatory Activity

In addition, several 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, permits Federal payments to be deposited onto a prepaid product only if the product is not attached to a line of credit or loan agreement under which repayment from

[196] 70 FR 9127 (Feb. 24, 2005) (Joint Guidance). The Office of Thrift Supervision also issued guidance on overdraft protection programs. *See* 70 FR 8428 (Feb. 18, 2005).

[197] 70 FR 9127, 9129 (Feb. 24, 2005).

[198] *Id.* at 9128.

[199] *Id.*

[200] 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 Insurance 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.

[201] 73 FR 28904 (May 19, 2008).

[202] 73 FR 28730 (May 19, 2008).

[203] 74 FR 5584 (Jan. 29, 2009). Specifically, this rule required, among other things, all banks to disclose aggregate overdraft fees on periodic statements, and not solely institutions that promote the payment of overdrafts.

[204] 74 FR 59033 (Nov. 17, 2009).

[205] *Id.* at 59037.

[206] Fed. Deposit Ins. Corp., FIL–81–2010, *Overdraft Payment Programs and Consumer Protection Final Overdraft Payment Supervisory Guidance* (Fin. Inst. Letter, Nov. 24, 2010), *available at https://www.fdic.gov/news/news//2010/fil10081.html.*

[207] 76 FR 33409 (June 8, 2011). The Office of Thrift Supervision also proposed supplemental guidance on overdraft protection programs. 75 FR 22681 (Apr. 29, 2010).

[208] 78 FR 25353 (Apr. 30, 2013).

[209] 77 FR 12031 (Feb. 28, 2012).

[210] *See* CFPB, *Data Point: Checking Account Overdraft* (July 2014), *available at http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf.*

[211] *See* CFPB, Spring 2016 Rulemaking Agenda (May 2016), *available at http://www.consumerfinance.gov/about-us/blog/spring-2016-rulemaking-agenda/.*

[212] *Id.*

the account is triggered upon delivery of the Federal payments, among other conditions.[213] The preamble 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.[214] The Treasury FMS Rule does not, however, directly address the permissibility of overdraft services.

Second, as discussed above, the Board's Regulation II generally caps interchange fees that may be imposed on debit card transactions. Regulation II provides an exemption from the fee restrictions for cards provided pursuant to a Federal, State, or local government-administered payment program and for certain reloadable prepaid cards.[215] However, Regulation II 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.[216] EFTA and Regulation II provide a separate, blanket exemption for cards of 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.[217]

Third, as discussed above in part II.B, ED's cash management regulation bans point-of-sale and overdraft fees on accounts, including prepaid card accounts, that are directly marketed to students by a financial institution with which the student's college or university has an arrangement to disburse Federal financial aid on behalf of the post-secondary institution.[218]

Separately, in 2015, the Department of Defense (DOD) issued a final rule [219] amending its regulation [220] that implements the Military Lending Act (MLA).[221] Under the MLA, a creditor generally may not apply a military APR (MAPR) greater than 36 percent in connection with an extension of consumer credit to a military service member or dependent.[222] The final rule expands the types of consumer credit covered by the regulation that implements the MLA so that it is now more consistent with the types of consumer credit covered by TILA, subject to certain statutory exemptions set forth in the MLA. Because overdraft services are exempted from Regulation Z, they are also exempted from the regulation that implements the MLA.[223] Additionally, although the DOD proposed that 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 for a particular billing cycle, and the MAPR for that billing cycle could not exceed 36 percent, the final rule provides a two-year exemption for credit extended in a credit card account under an open-end (not home-secured) consumer credit plan.[224]

D. Other Payments-Related Bureau Actions

The Bureau has handled approximately 5,600 prepaid card complaints as of August 1, 2016.[225] Concerns have included issues related to accessing funds loaded on the prepaid cards, unauthorized transactions, fees, and error resolution.[226] 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.[227] The Bureau sought information on how mobile technologies are impacting economically vulnerable consumers with limited access to traditional banking systems. The Bureau received approximately 48 comments in response to this request for information, and published a summary of the comments in November 2015.[228] Among other things, the summary noted that the comments indicated a significant increase in the use of virtual prepaid products (prepaid products accessed via computer or on a mobile device without a physical card) by underserved consumers (*i.e.,* low-income, unbanked, underbanked, and economically vulnerable consumers).

In August 2014, the Bureau issued a consumer advisory on virtual currencies that discussed the risks to consumers posed by them.[229] At the same time, the Bureau also began accepting consumer complaints regarding virtual currencies. In the proposal, the Bureau stated that its analysis with respect to virtual currencies and related products and services was ongoing. The proposal did not resolve specific issues with respect to the application of either existing regulations or the proposed rule to virtual currencies and related products and services.[230] Nonetheless, the Bureau received some comments on whether the Bureau should regulate virtual currency products and services under this final rule. These comments are discussed in greater detail in the section-by-section analysis of § 1005.2(b) below.

III. Summary of the Rulemaking Process

The Bureau undertook several years of research, analysis, and other outreach before issuing this final rule. As noted above, the Bureau issued the Prepaid ANPR in 2012, 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.

The Bureau received over 220 comments on the Prepaid ANPR.[231] Industry commenters, including banks and credit unions, prepaid program managers, payment networks and

[213] *See* 31 CFR 210.5(b)(5)(i)(C).

[214] 75 FR 80335 (Dec. 22, 2010).

[215] *See* 12 CFR 235.5(b) through (d).

[216] 12 CFR 235.5(d)(1).

[217] *See* EFTA section 920(a)(6)(A) and 12 CFR 235.5(a).

[218] *See generally* 80 FR 67126 (Oct. 30, 2015).

[219] 80 FR 43560 (July 22, 2015). The DOD issued a related interpretive rule in August 2016. *See* 81 FR 58840 (Aug. 26, 2016).

[220] 32 CFR part 232.

[221] 10 U.S.C. 987 *et seq.*

[222] 10 U.S.C. 987(b).

[223] 80 FR 43560, 43580 (July 22, 2015).

[224] 32 CFR 232.13.

[225] While this number reflects complaints since July 11, 2011, the Bureau did not officially begin accepting consumer complaints about prepaid products until July 2014. *See* Press Release, CFPB, *CFPB Begins Accepting Consumer Complaints on Prepaid Cards and Additional Nonbank Products* (July 21, 2014), *available at http://www.consumerfinance.gov/newsroom/cfpb-begins-accepting-consumer-complaints-on-prepaid-cards-and-additional-nonbank-products.*

[226] *See, e.g.,* CFPB Monthly Complaint Report, at 11–12 (Mar. 2016), *available at http://files.consumerfinance.gov/f/201603_cfpb_monthly-complaint-report-vol-8.pdf (the monthly report included a section on prepaid card complaints).*

[227] 79 FR 33731 (June 12, 2014).

[228] CFPB, *Mobile Financial Services—A Summary of Comments from the Public on Opportunities, Challenges, and Risks for the Underserved* (Nov. 2015), *available at http://files.consumerfinance.gov/f/201511_cfpb_mobile-financial-services.pdf.*

[229] 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.*

[230] 79 FR 77102, 77133 (Dec. 23, 2014).

[231] The comments can be reviewed at *http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0019-0001.*

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. The Bureau evaluated the comments received in response to the Prepaid ANPR in its preparation of the proposed rule.

The Bureau conducted extensive and significant additional outreach and research following the Prepaid ANPR as part of its efforts to study and evaluate prepaid products. The Bureau's pre-proposal outreach included meetings with industry, consumer groups, and non-partisan research and advocacy organizations. The Bureau also conducted market research, monitoring, and related actions 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 the Bureau's market monitoring efforts. Further, the Bureau obtained information directly from consumers through focus groups and consumer testing. Additionally, as noted above, the Bureau studied publicly available account agreements for prepaid products that appear to meet the Bureau's proposed definition of the term ''prepaid account'' that involved Bureau staff reviewing of numerous prepaid products' terms and conditions 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. The Bureau's consumer testing and Study of Prepaid Account Agreements are discussed in greater detail below.

To prepare this final rule, the Bureau considered, among other things, feedback provided in response to the Prepaid ANPR, feedback provided to the Bureau prior to the issuance of its proposal, including information gathered during consumer testing, interagency consultations, and feedback provided in response to the proposed rule, and additional consumer testing.

A. Pre-Proposal and Post-Proposal Consumer Testing

The Bureau conducted both pre-proposal and post-proposal qualitative testing of prepaid account prototype disclosure forms with prepaid card users to inform the Bureau's design and development of the model and sample forms included in the final rule. The prototypes included forms that could be used in the context of GPR cards, payroll and government benefits cards, and for prepaid account programs with multiple service plans. The Bureau engaged and directed a third-party vendor selected by competitive bid, ICF International (ICF), to coordinate this qualitative consumer testing. ICF prepared a report memorializing the consumer testing after both pre-proposal and post-proposal testing in, respectively, ICF Report I and ICF Report II.[232] The qualitative testing was conducted in accordance with OMB Control Number 3170–0022.

Pre-proposal testing consisted of (1) four informal focus groups to gather in-depth information about how consumers shop for prepaid cards and the factors they consider when acquiring such products and (2) three rounds of one-on-one interviews to see how consumers interact with the prototype forms developed by the Bureau and use them in comparison shopping exercises. The focus groups were held in Bethesda, Maryland in December 2013; each lasted approximately 90 minutes and included eight to 10 participants. Each of the three rounds of one-on-one interviews lasted approximately 60 to 75 minutes, included nine or 10 participants each, and took place in early 2014 in Baltimore, Maryland; Los Angeles, California; and Kansas City, Missouri.

The findings from the focus groups, as well as responses to the Bureau's ANPR (see the section-by-section analysis of § 1005.18(b) below) and other outreach activities, strongly influenced the Bureau's decision to develop and propose a pre-acquisition disclosure regime that includes both an easily digestible ''short form'' disclosure highlighting key fees and features of a prepaid account program in a standardized format apt for comparison shopping that could fit on existing packaging material used to market prepaid products on J-hooks in retail locations and a ''long form'' disclosure containing a comprehensive list of fees and other information germane to the purchase and use of the prepaid account program. Pre-proposal one-on-one testing allowed the Bureau to experiment with various structures and content to arrive at an optimal design.

Post-proposal testing, which consisted of two rounds of one-on-one interviews, had the same goals as pre-proposal interviews but with the added goal of further refining the proposed model and sample short form and long form disclosures. This further refinement was based on the response of testing participants to changes to the prototypes resulting from the Bureau's own internal review as well as public comments received in response to the proposed rule. Each one-on-one interview lasted approximately 75 minutes and took place in Arlington, Virginia in July 2015 and Milwaukee, Wisconsin in August 2015 with 9 and 11 participants, respectively.

Eighty-nine consumers participated in the pre- and post-proposal testing, representing a range of ages, races, and education levels.[233] All testing was conducted in English, but each round 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). Several participants had experience with payroll or government benefits cards in addition to or in lieu of GPR cards.

Focus group findings highlights. Few focus group participants reported doing any formal comparison shopping before purchasing a prepaid card in a retail store. Furthermore, only about half of participants indicated that they learned about the fees associated with their prepaid cards prior to purchase; a few of them reported learning about a card's fees post-acquisition only 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. Based on these finding and the Bureau's outreach more generally, the Bureau developed several ''short form'' and ''long form'' prototype disclosure forms to test with participants in the individual interview segment of the consumer testing.

Individual interviews findings highlights. In both pre- and post-proposal consumer testing, 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 also 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 the testing. The Bureau used this feedback to make

[232] *See* ICF Report I, and ICF Int'l, *Final Report of Findings: Post-Proposal Testing of Prepaid Card Disclosures* (Oct. 2015), *available at http://files.consumerfinance.gov/f/201510_cfpb_report-findings-testing-prepaid-card-disclosures.pdf* (ICF Report II).

[233] For a detailed discussion of the methodology used in the consumer testing, including participant selection, see, respectively, ICF Report I at 2–4 and ICF Report II at 4.

iterative changes, as necessary, to the form design for the next round of testing.

In the first round of pre-proposal testing, the Bureau tested short form disclosures that variably included: (1) A ''top-line'' of four fees displayed more prominently than the other fees, (2) fees grouped together by category, or (3) fees listed without including either the top-line or fee categories. Generally, participants were able to understand the basic fee information presented in all of the prototype disclosure forms. However, many participants expressed a preference for a form that is both easy to read and that prominently displays the most important fee information. These participants also said they believed that prototype forms that included a ''top line'' disclosure of certain fees met these objectives.

The Bureau also focused on developing and testing a short form that did not disclose all the variations for each fee and full explanations of the conditions under which those variations could be incurred. 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 prototype forms in the first round of testing included a system with sets of multiple asterisks to indicate additional information was available for fees that could vary in amount. Many participants, however, failed to notice the text associated with the asterisks or struggled to accurately connect the various symbols with the appropriate fees.

To improve comprehension, the Bureau introduced forms in the second round of testing that only included a single symbol linked to one line of explanatory text indicating all of the fees that might vary on the form. This modification appeared to increase the frequency with which participants noticed the language associated with the symbol, and thus, the frequency with which participants noticed that fees could vary also increased. In the third round of testing, in addition to reviewing additional short form disclosure 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.

During its pre-proposal testing, the Bureau posted a blog on its Web site that included two of the prototype short form disclosure designs used during the second round of testing[234] and invited the public to provide feedback on the prototypes, including suggestions for improvement. 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 for the ensuing round of pre-proposal consumer testing as well as for the model forms included in the proposed rule.

Post-proposal testing consisted of two rounds of one-on-one interviews intended to further refine the model and sample forms published in the proposed rule. In addition to general refinement of the text and design of the proposed short form and long form disclosures, the Bureau tested new elements introduced as a result of internal Bureau analysis and stakeholder input from comments to the proposal and post-proposal ex-parte communications.[235]

Post-proposal testing of the overall design integrity and effectiveness of the disclosures confirmed participants' general ability to navigate and understand the short and long form disclosures. Nearly all participants were able to successfully identify all fees on the short form disclosure when asked whether the prepaid account had such a fee.[236] Further, when asked about a fee that did not appear on or with the short form disclosure, almost all participants referred to the long form disclosure and were able to successfully find the information for which they were looking.[237] Also, when comparing short forms for two different hypothetical prepaid account programs, most participants were able to compare fees between forms and reach an informed decision as to which card would be best for their circumstances.[238] This was true even when one of the forms described a prepaid card with a more complex, multiple fee plan structure.[239] With regard to the requirement to disclose the highest fee in the short form disclosure, continued refinement in post-proposal testing of the asterisk system to alert consumers of when the fee amount could be lower resulted in increased participant comprehension with almost all participants correctly applying the text to fees with an asterisk, and fewer misapplications of the text to fees without an asterisk.[240]

Post-proposal testing of a statement regarding overdraft and credit generally showed participants correctly understood that they would not necessarily be offered credit or overdraft by the prepaid provider, would have to wait 30 days to get the feature, and might be charged fees for the feature.[241] Testing of a statement regarding FDIC insurance coverage generally showed participants understood whether or not the prepaid card offered such insurance and that insurance coverage was a positive feature, although less than half were able to accurately explain against what FDIC insurance would protect them.[242] The testing of two versions of language at the top of the short form disclosure for payroll cards and government benefits cards explaining that other methods were also available for potential card recipients to receive their wages or benefits indicated that participants who saw this language generally understood they did not have to accept payment on the card.[243] Testing also revealed that neither version affected whether or not participants said they would be interested in receiving wages or benefits via the card.[244]

Post-proposal testing indicated the effectiveness of the removal or addition of some disclosure elements from the proposed short form disclosures that the Bureau is adopting in this final rule. For example, in an attempt to streamline the short form with a single disclosure for like fees, when testing participants were presented with a single fee for ATM withdrawals, as opposed to separate fees for both ''in-network'' and ''out-of-network'' withdrawals, all participants seemed to understand that the amount of this fee would not depend on whether the cardholder used an in-network or out-of-network ATM.[245] Also, the testing of the addition of a second symbol (a dagger symbol (†), in addition to the asterisk discussed above) linked to a statement about situations in which the monthly fee would be waived or discounted revealed that most

[234] 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/.*

[235] For more detailed discussion of post-proposal testing, see ICF Report II and the specific section-by-section analysis of the particular disclosure elements below.

[236] *See* ICF Report II at 5.

[237] *Id.* at 7.

[238] *Id.* at 5.

[239] *Id.*

[240] *Id.* See also the section-by-section analysis of § 1005.18(b)(3)(i) below.

[241] *Id.* at 6, 14–15, and 24–25. See also the section-by-section analysis of § 1005.18(b)(2)(x) below.

[242] *Id.* at 7. See also the section-by-section analysis of § 1005.18(b)(2)(xi) below.

[243] *Id.* at 7. See also the section-by-section analysis of § 1005.18(b)(2)(iv)(A) below.

[244] *Id.*

[245] *Id.* at 5. See also the section-by-section analysis of § 1005.18(b)(3)(iii) below.

participants saw the dagger and were able to link it to the appropriate statement.[246]

Results from the focus groups and one-on-one testing conducted by the Bureau and ICF in pre- and post-proposal consumer testing, fortified with a variety of forms of stakeholder input and the Bureau's own research and analysis, led the Bureau to its final disclosure requirements and the design of the model and sample forms contained in this final rule.

B. Study of Prepaid Account Agreements

To determine current industry practices with respect to existing compliance with Regulation E and other features and protections currently offered by prepaid products and to inform its understanding of the potential costs and benefits of extending various Regulation E protections to prepaid accounts, the Bureau conducted a study of 325 publicly available account agreements for prepaid products that appeared to meet the Bureau's proposed definition of the term ''prepaid account,'' and published the results in the Study of Prepaid Account Agreements concurrently with the Bureau's issuance of the proposal.

The study contains the Bureau's analysis of 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 NCUA pass-through insurance; and general disclosure of fees. The agreements the Bureau analyzed included GPR card program agreements (including GPR cards marketed for specific purposes, such as travel or receipt of tax refunds, or for specific users, such as teenagers or students), payroll cards agreements, agreements for cards used for the distribution of certain government benefits, and agreements for similar card programs. The Bureau also included agreements for prepaid products specifically used for P2P transfers that appeared to be encompassed by the proposal's definition of prepaid account. The Bureau did not include gift, incentive and rebate card programs, health spending account and flexible spending account programs, and needs-tested State and local government benefit card programs in the study, because the Bureau proposed to exclude such products from the rulemaking. As discussed in greater detail in the proposal, the Bureau cautioned that its agreement collection was neither comprehensive nor complete. In addition, the study was not intended to be relied upon as an assessment of legal issues, including actual compliance with current Regulation E provisions that apply to payroll card accounts or cards used for the distribution of certain government benefits, the FMS Rule, or the proposal.[247]

C. The Bureau's Proposal

In November 2014, the Bureau released for public comment a notice of proposed rulemaking regarding Regulations E and Z that proposed comprehensive consumer protections for prepaid accounts. The proposal was published in the **Federal Register** in December 2014.[248] Although prepaid products are among the fastest growing types of payment instruments in the United States, with certain limited exceptions prepaid products have not been subject to the existing Federal consumer regulatory regime in Regulation E that provides consumer disclosures, error resolution, and protection from unauthorized transfers.[249]

The Bureau proposed to establish a new definition of ''prepaid account'' within Regulation E and adopt comprehensive consumer protection rules for such accounts. The proposal would have extended 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 ATMs or for 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 proposal also would have modified Regulation E, as it would pertain to prepaid accounts, in several key respects. First, the proposal would have required financial institutions to make certain disclosures available to consumers before a consumer acquires a prepaid account. These disclosures would have taken two forms, whether provided orally, in writing, or electronically. The first would have been a short form highlighting key fees that the Bureau believed to be most important for consumers to know about prior to acquisition. The second would have been a long form setting forth all of the prepaid account's fees and the conditions under which those fees could be imposed. In certain circumstances, the proposed rule would have provided an exception for financial institutions that offered prepaid cards for sale over the phone or in retail stores that would have allowed 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 after a consumer had acquired the prepaid account. To facilitate compliance, the proposal contained new model forms and sample forms, as well as revisions to existing Regulation E model forms and model clauses. The use of the model forms would have established a safe harbor for compliance with the short form disclosure requirement.

In addition, with certain modifications, the proposed rule would have extended 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 have allowed 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 covered at least 18 months; and (3) a written history of account transactions that covered at least 18 months upon request. For all prepaid accounts, the proposed rule would have required 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 proposed rule would have modified Regulation E to adopt error resolution and limited liability provisions specific to prepaid accounts. 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 proposal would have extended these consumer protections to registered prepaid accounts, with modifications to the timing requirements for reporting unauthorized transfers and errors when a financial institution followed the periodic statement alternative described above.

[246] *Id.* at 5. See also the section-by-section analysis of § 1005.18(b)(3)(ii) below.

[247] 79 FR 77102, 77123 (Dec. 23, 2014).

[248] 79 FR 77102 (Dec. 23, 2014).

[249] *See generally* 12 CFR part 1005.

In addition, the proposed rule would have required 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 new and amended agreements to the Bureau on a quarterly basis for posting on a Web site maintained by the Bureau.

The proposed rule would have also revised various other provisions in subparts A and B of Regulation E. With respect to subpart A, the proposed amendments included a revision that would have made clear that, similar to payroll card accounts, a consumer could not be required to establish an account with a particular institution for receipt of government benefits. Additionally, the Bureau proposed 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 proposed certain conforming and streamlining changes to the official interpretations that would not have affected the substance of the interpretations.

Overdraft Services and Certain Other Credit Features

The proposed rule would have modified Regulations Z and E to address the treatment of overdraft services and certain other credit features offered in connection with prepaid accounts.

Regulation Z. The proposal would have amended Regulation Z so that prepaid account issuers that offered prepaid accounts with overdraft services and certain other credit features and charged a fee for the service (such as interest, transaction fees, annual fees, or other participation fees) generally would have become subject to Regulation Z's credit card rules and disclosure requirements for open-end (not home-secured) consumer credit plans. In addition, the proposed rule would have revised Regulation Z so that its credit card rules have applied to separate lines of credit linked to prepaid accounts. The proposed rule would have also required an issuer to obtain an application or request from a consumer before adding overdraft credit features to a prepaid account and would have prohibited the issuer from adding such features until at least 30 calendar days after a consumer registered the prepaid account. Moreover, the proposed rule would have amended Regulation Z 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 an overdraft service or credit feature. The proposed rule would have also prevented an issuer from automatically deducting overdraft amounts from the next deposit to the prepaid account, such as cash loads or direct deposits, to repay and replenish the credit line.

Regulation E. The proposed rule would have revised Regulation E to include disclosures about overdraft services and certain other credit features that could be linked to prepaid accounts in the short form and long form disclosures. The proposed rule also would have provided that the compulsory use prohibition would apply to overdraft services and certain other credit features linked to prepaid accounts. Prepaid account issuers would have been prohibited from requiring consumers to set up preauthorized EFTs to repay credit extended through an overdraft service or credit feature. Lastly, the proposed rule would have amended 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 proposed rule would have provided that with certain exceptions, the effective date for the requirements set forth in a final rule would be nine months after publication in the **Federal Register**. The exception would have been 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.

Requests To Extend the Comment Period

The Bureau set the length of the comment period on the proposal at 90 days from the date on which it was published in the **Federal Register**. The proposal was published on December 23, 2014, thus making March 23, 2015 the last day of the comment period. A number of members of Congress and two national trade associations representing prepaid product providers submitted written requests that asked the Bureau extend the 90-day comment period by an additional 60 days. The requests indicated that additional time would enable industry to evaluate the proposal in a more thorough manner. The Bureau believes that the 90-day comment period set forth in the proposed rule gave interested parties a sufficient amount of time to consider the proposal and prepare their responses, and thus did not extend the comment period beyond March 23, 2015. However, as discussed below, the Bureau considered ex parte comments submitted after the deadline as part of its deliberations.

D. Feedback Provided to the Bureau

The Bureau received over 65,000 comments on the proposal during the comment period. Approximately 150 comments were unique, detailed comment letters representing diverse interests. These commenters included consumer advocacy groups; national and regional industry trade associations; prepaid industry members including issuing banks and credit unions, program managers, payment networks, and payment processors; digital wallet providers; virtual currency companies; non-partisan research and advocacy organizations; members of Congress; State and local government agencies; and individual consumers.

Approximately 6,000 consumers submitted comments generally supporting the availability of overdraft services for prepaid products (approximately 1,000 of which were form comments). Approximately 56,000 form comments were submitted by individual consumers as part of a comment submission campaign organized by a national consumer advocacy group, generally in support of the proposal—particularly related to limited liability and the requirement to assess consumers' ability to pay before offering credit attached to prepaid cards.[250] These form comments also urged the Bureau to go further in certain respects; requesting, among other things, that the Bureau add additional information to its proposed disclosure forms and require that funds loaded into prepaid accounts be FDIC insured. Several hundred of these 56,000 comments contained additional remarks from consumer commenters, though many of these were outside the scope of this rulemaking.

In addition, the Bureau also considered comments received after the comment period closed via approximately 65 ex parte submissions,

[250] The Bureau typically does not post form letters containing identical comments to the docket. Rather, the Bureau generally posts a single example of the form letter to the docket. Form letter comments that contain some customization from the sender are all posted to the docket.

meetings, and telephone conferences.[251] Materials on the record, including ex parte submissions and summaries of ex parte meetings and telephone conferences, are publicly available at *http://www.regulations.gov*. Relevant information received is discussed below in the section-by-section analysis and subsequent parts of this notice, as applicable. The Bureau considered all the comments it received regarding the proposal, made certain modifications, and is adopting the final rule as described part V below.

IV. Legal Authority

The Bureau is issuing this final rule pursuant to its authority under EFTA, the Dodd-Frank Act, and TILA, as discussed in this part IV and throughout the section-by-section analyses of the final rule in part V below.

A. The 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 EFT 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 EFT service,[252] notices of certain changes to account terms or conditions,[253] provision of written documentation to consumers regarding EFTs,[254] error resolution,[255] consumers' and financial institutions' liability for unauthorized EFTs,[256] and compulsory use of EFTs.[257]

With respect to disclosures provided prior to opening an account, EFTA section 905(a) states that the terms and conditions of EFTs involving a consumer's account shall be disclosed at the time the consumer contracts for an EFT service, in accordance with regulations of the Bureau. EFTA section 904(b) 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 EFTs by utilizing readily understandable language. As discussed in the section-by-section analysis below, the final rule's pre-acquisition disclosure requirements (including those in final § 1005.18(b)) are adopted pursuant to the Bureau's authority under EFTA sections 904(a), (b), 905(a), and its adjustments and exceptions authority under EFTA section 904(c).

As amended by the Dodd-Frank Act, EFTA section 904(a) authorizes the Bureau to prescribe regulations 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.'' [258] 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 EFTs 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.'' [259] As discussed in the section-by-section analyses below, the Bureau is adopting amendments to Regulation E, including with respect to the definition of account, limited liability, procedures for resolving errors, access to account information, and prepaid accounts that may offer an overdraft credit feature, pursuant to the Bureau's authority under, as applicable, EFTA 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.[260] 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 part VII 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. Section 1022(c)(3) provides that the Bureau shall publish not fewer than one report of significant findings of its monitoring in each calendar year and may make public such information obtained by the Bureau under this section as is in the public interest.[261] 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. As discussed in the section-by-section analysis below, new § 1005.19 is adopted pursuant to the Bureau's authority under Dodd-Frank Act sections 1022(c) and 1032(a), as well as its authority under EFTA sections 904 and 905. It requires submission of prepaid account agreements to the Bureau. It also requires that financial institutions disclose such agreements on their Web sites.

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

[251] *See also* CFPB Bulletin 11–3, *CFPB Policy on Ex Parte Presentations in Rulemaking Proceedings* (2011), *available at http://files.consumerfinance.gov/f/2011/08/Bulletin_20110819_ExParte PresentationsRulemaking.pdf*.

[252] EFTA section 905(a).

[253] EFTA section 905(b).

[254] EFTA section 906.

[255] EFTA section 908.

[256] EFTA sections 909 and 910.

[257] EFTA section 913.

[258] EFTA section 902(b).

[259] *See* S. Rept. No. 95–1273, at 26 (Oct. 4, 1978).

[260] 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).

[261] Dodd-Frank Act section 1022(c)(3).

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 this final 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 ICF Report I and ICF Report II.

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.[262]

As discussed in more detail below, certain portions of this final rule are adopted pursuant to the Bureau's disclosure authority under Dodd-Frank Act 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.[263]

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.[264] 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 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.[265] Closed-end credit is credit that does not meet the definition of open-end credit.[266]

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.[267] 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.[268] The term ''creditor'' also includes a card issuer, which is a person or its agent that issues credit cards, when that person extends credit accessed by the credit card.[269] 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.[270] In addition to being subject to the general rules of TILA and Regulation Z applicable to all creditors, 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.[271]

TILA section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a)[272] 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's 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.''[273] 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)

[262] Dodd-Frank Act section 1032(b)(2).

[263] TILA section 102(a); 15 U.S.C. 1601(a).

[264] TILA section 103(f); 15 U.S.C. 1602(f); § 1026.2(a)(14); 15 U.S.C. 1602(f).

[265] § 1026.2(a)(20).

[266] § 1026.2(a)(10).

[267] TILA section 103(g); 15 U.S.C. 1602(g); § 1026.2(a)(17)(i).

[268] TILA section 106(a); 12 U.S.C. 1605(a); § 1026.4.

[269] TILA section103(g); 15 U.S.C. 1602(g); § 1026.2(a)(17)(iii) and (iv).

[270] § 1026.2(a)(15). As noted above, under Regulation Z, a charge card is a credit card on an account for which no periodic rate is used to compute a finance charge. § 1026.2(a)(15)(iii).

[271] *See generally* §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), 1026.12, and 1026.51 through 1026.60.

[272] 15 U.S.C. 1604(a).

[273] TILA section 102(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).[274]

For the reasons discussed in this notice, the Bureau is adopting amendments to Regulation Z with respect to certain prepaid accounts that are associated with overdraft credit features to carry out TILA's purposes and is adopting 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 this final rule pursuant to its authority under TILA section 105(a),[275] 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

Regulation E

Subpart A—General

Overview of the Bureau's Approach to Regulation E

As discussed above in part III.C, the Bureau proposed to amend Regulation E, which implements EFTA, along with the official interpretations thereto. The proposal would have created comprehensive consumer protections for prepaid financial products by expressly bringing such products within the ambit of Regulation E as prepaid accounts. In addition, the proposal would have created several new provisions specific to such accounts.

After consideration of the feedback received at every stage of the rulemaking process (in response to the Prepaid ANPR, in the course of developing the proposal, and since issuing the proposal) as well as multiple rounds of consumer testing, and interagency consultations, the Bureau is adopting this same general approach in the final rule, with some modifications, as discussed herein.

The Bureau's rationale for its approach in the final rule, and its response to specific comments addressing each of the proposed revisions and additions, are discussed in greater detail in the section-by-section analyses that follow.

Comments Received on the Bureau's Proposed Approach Generally

In addition to comments regarding specific sections of the proposal, the Bureau received comments addressing more generally its proposed approach to regulating prepaid accounts under Regulation E. Consumer group commenters largely praised the Bureau for proposing to add protections for prepaid accounts. They pointed to what they described as a gap in regulatory protection relating to GPR cards, and noted the importance of additional protections for this product segment, especially in light of what they characterized as increased consumer usage and increased complexity of product offerings in the GPR card market. In particular, following a high-profile service disruption affecting a particular issuer and thousands of its prepaid accountholders, several consumer groups submitted a joint letter commending the Bureau for its proposal to extend Regulation E to all prepaid accounts. The letter suggested that, had Regulation E applied uniformly to all prepaid accounts at the time of the incident, consumers may have had more and better tools at their disposal to address the incident. In addition to generally commending the Bureau for proposing a rule that, in their view, would provide necessary protections for prepaid account consumers that consumers of other account types already have, consumer group commenters voiced general support for specific key portions of the Bureau's proposal, in particular the standardization of prepaid account disclosures, extending Regulation E's limited liability and error resolution provisions to prepaid accounts, and regulating credit features offered in connection with prepaid accounts.

Most consumer group commenters, however, urged the Bureau to go farther by finalizing additional protections beyond those that were proposed. Specifically, several consumer groups urged the Bureau to ban or limit specific fees generally or to do so for specific products. For example, commenters argued that the Bureau should ban or limit balance inquiry fees, fees for making customer service calls, declined transaction or NSF fees, card replacement fees, inactivity fees, maintenance fees, legal process fees, research fees, and account closing fees. Still other commenters argued that the Bureau should ban all fees on cards used by correctional facilities to distribute funds to formerly-incarcerated individuals, or that it should ban or limit all fees for withdrawing salary or wages, or insurance, tax, or student financial aid funds, especially in cases where the cardholder has no choice but to receive those funds on a prepaid account.

Consumer group commenters also sought certain prohibitions unrelated to fees. For example, a number of consumer groups asked the Bureau to prohibit forced arbitration and class action ban clauses in prepaid account agreements. One consumer group urged the Bureau to limit financial institutions' ability to place holds on account funds while a transaction clears. Other consumer groups urged the Bureau to require that additional features be offered in connection with prepaid accounts. For example, a number of consumer groups asked the Bureau to consider requiring, or at least encouraging, financial institutions to offer linked savings accounts in connection with prepaid accounts, and a coalition of consumer groups urged the Bureau to require that consumers' prepaid account usage be reported to the credit reporting agencies.[276]

While most commenters, including industry groups, did not object to the general concept of bringing prepaid products within the ambit of Regulation E, many industry commenters voiced concern about the overall level of burden that would be imposed by the proposal on entities that issue or act as service providers for issuers of prepaid accounts. This includes some trade associations, issuing banks and credit unions, program managers, and others, as well as a member of Congress, who argued that the overall burdens of the proposal would be disproportionate to what they viewed as limited benefits. Some of these commenters argued in particular that the rule was unnecessary because most issuers of GPR cards are already following Regulation E. A subset of these commenters, including an issuing bank, a law firm writing on

[274] 15 U.S.C. 1602(bb).

[275] As discussed further in the section-by-section analysis of Regulation Z § 1026.60(b), the Bureau also relies on TILA section 127(c)(5) for the requirements in the final rule for additional disclosures provided on or with charge card applications and solicitations.

[276] In the Prepaid ANPR, the Bureau sought input and data on the efficacy of certain other features that are or could be offered in connection with prepaid accounts, including linked savings features and credit-building features whereby consumers' transaction history may be reported to credit reporting agencies. Based on the ANPR comments received, as well as its understanding of the state of the market, the Bureau stated its belief that it would not be appropriate to take further action on those issues in the context of the proposal. Nonetheless, the Bureau solicited additional input and data on these issues.

behalf of a coalition of prepaid issuers, and a payment network, argued that the proposed rule would over-burden industry because it was impractical or impossible to comply with, overly complex, highly prescriptive, or overly broad. These and other commenters, including industry trade associations, issuing banks, and a payment network, argued further that financial institutions would respond to these additional burdens by either exiting the market, reducing their product offerings, or raising prices, all of which, they said, have the potential to reduce overall consumer choice in the prepaid marketplace. Some of these commenters expressed concern particularly about the impacts of the rule on digital wallets and other emerging products. Some commenters, including a program manager, industry trade associations, an issuing bank, and the law firm writing on behalf of a coalition of prepaid issuers, also argued that the burdens imposed by the rule were not justified by the intended consumer benefits or by the Bureau's desire to remedy what the commenters viewed as relatively minor or hypothetical consumer harms.

Commenters urged the Bureau to exclude specific types of entities from coverage under the rule. In particular, a number of industry commenters noted the unique burdens they believed the rule would place on small banks and credit unions, while a subset of these commenters, including an issuing credit union, trade associations representing banks and credit unions, and a program manager, argued that the Bureau should exempt these smaller institutions from the rule altogether. By contrast, one industry trade association urged the Bureau to take additional steps to supervise and enforce against non-depository financial institutions in the prepaid market, such as by issuing a rule under section 1024 of the Dodd-Frank Act,[277] arguing that without direct oversight from the Bureau, these non-depository players would be unfairly advantaged by lower compliance costs.

[277] Under section 1024 of the Dodd-Frank Act, the Bureau is authorized to supervise certain non-bank covered persons for compliance with Federal consumer financial laws and for other purposes. Under section 1024(a)(1)(B) of the Dodd-Frank Act, for certain markets, the supervision program generally will apply only to ''larger participant[s]'' of these markets. The Bureau has defined larger participants in several markets and is considering issuing additional regulations to define further the scope of the Bureau's non-bank supervision program.

Summary of the Bureau's Approach To Regulating Prepaid Accounts Under Regulation E

The Bureau has considered these general comments and has made certain modifications to the rule, as discussed in detail in the section-by-section analyses that follow, to calibrate carefully with regard to burden concerns. The major provisions of the final rule are organized as follows: § 1005.2(b)(3) adds the term prepaid account to the general definition of account in Regulation E and sets forth a definition for that term, revised from the proposal for clarity and with some additional exclusions. Comment 10(e)(2)–2 clarifies that the existing prohibition on compulsory use in § 1005.10(e)(2) prohibits a government agency from requiring consumers to receive government benefits by direct deposit to any particular institution. Section 1005.15, which includes preexisting provisions applicable to government benefit accounts, also includes new provisions setting forth and clarifying the application of several provisions of revised § 1005.18 (concerning disclosures, access to account information, error resolution and limited liability requirements, and overdraft credit features) to government benefit accounts.

Section 1005.18 contains the bulk of the final rule's specific requirements for prepaid accounts. Section 1005.18(a) states that prepaid accounts must comply with subpart A of Regulation E, except as modified by § 1005.18. Section 1005.18(b)(1) sets forth that, in general, both the short form and long form disclosures must be provided before a consumer acquires a prepaid account. For prepaid accounts sold at retail locations, however, a financial institution may provide the long form disclosure after acquisition so long as the short form contains information enabling the consumer to access the long form by telephone and on a Web site. A similar accommodation is made for prepaid accounts acquired orally by telephone. Section 1005.18(b)(2) contains the general content requirements for the short form disclosure, while § 1005.18(b)(3) addresses specific short form requirements related to disclosure of variable fees and third-party fees, as well as treatment of finance charges on overdraft credit features offered in connection with a prepaid account. Section 1005.18(b)(4) contains the content requirements for the long form disclosure. Section 1005.18(b)(5) requires that certain additional information be disclosed outside but in close proximity to the short form, including the purchase price and activation fee, if any, for the prepaid account. Section 1005.18(b)(6) contains requirements regarding the form of the pre-acquisition disclosures, including specific requirements applicable when disclosures are provided in writing, electronically, or orally by telephone. Section 1005.18(b)(7) sets forth formatting requirements for the short form and long form disclosures generally, as well as formatting requirements for payroll card accounts and prepaid accounts that offer multiple service plans in particular. Section 1005.18(b)(8) requires that fee names and other terms must be used consistently within and across the disclosures required by final § 1005.18(b). Section 1005.18(b)(9) requires financial institutions to provide pre-acquisition disclosures in foreign languages in certain circumstances.

Next, § 1005.18(c) addresses access to account information requirements for prepaid accounts. It states that a financial institution is not required to provide periodic statements if it makes available to the consumer balance information by telephone, at least 12 months of electronic account transaction history, and upon the consumer's request, at least 24 months of written account transaction history. Periodic statements and account transaction histories must disclose the amount of any fees assessed against the account, and must display a summary total of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date. Section 1005.18(d) sets forth alternative disclosure requirements for both the initial disclosures and annual error resolution notices for financial institutions that provide information under the periodic statement alternative in § 1005.18(c).

Section 1005.18(e) clarifies that prepaid accounts must generally comply with the limited liability provisions in existing § 1005.6 and the error resolution requirements in § 1005.11, with some modifications. Specifically, the final rule extends Regulation E's limited liability and error resolution requirements to all prepaid accounts, regardless of whether the financial institution has completed its consumer identification and verification process with respect to the account, but does not require provisional credit for unverified accounts. Section 1005.18(f) contains certain other disclosure requirements, such as a requirement that the initial disclosures required by § 1005.7 include

all of the information required to be disclosed in the long form and specific disclosures that must be provided on prepaid account access devices. Finally, § 1005.18(h) sets forth a general effective date of October 1, 2017 for most of the final rule, with some specific accommodations related to disclosures and account information. Among other things, the final rule permits financial institutions to continue distributing prepaid account packaging material that was manufactured, printed, or otherwise produced prior to the effective date provided certain conditions are met.

Section 1005.19 contains the requirements for submitting prepaid account agreements to the Bureau and for posting the agreements to the Web site of the prepaid account issuer. Section 1005.19(a) provides certain definitions specific to § 1005.19. Section 1005.19(b)(1) requires an issuer to make submissions to the Bureau no later than 30 days after an issuer offers, amends, or ceases to offer any prepaid account agreement. Sections 1005.19(b)(2) and (3) set forth the requirements for the submission of amended agreements and the notification of agreements no longer offered. Sections 1005.19(b)(4) and (5) provide de minimis and product testing exceptions to the submission requirement. Section 1005.19(b)(6) sets forth the form and content requirements for prepaid account agreements submitted to the Bureau. Section 1005.19(c) generally requires an issuer to post and maintain on its publicly available Web site prepaid account agreements that are offered to the general public. Section 1005.19(d) requires issuers to provide consumers with access to their individual prepaid account agreements either by posting and maintaining the agreements on their Web site, or by promptly providing a copy of the agreement to the consumer upon request. Section 1005.19(f) provides a delayed effective date of October 1, 2018 for the requirement to submit prepaid account agreements to the Bureau.

The final rule also adds provisions to Regulation E that supplement and complement the final rule amendments to Regulation Z regarding overdraft credit features offered in connection with a prepaid account. As discussed below in the section-by-section analyses under Regulation Z, the final rule generally applies the Regulation Z credit card rules to overdraft credit features that can be accessed in the course of a transaction with the prepaid card where such credit features are provided by the prepaid account issuer, its affiliate, or its business partner. The final rule generally requires that such overdraft credit features be structured as separate sub-accounts or accounts, distinct from the prepaid asset account. Under the final rule, a prepaid card that can access such an overdraft credit feature is defined as a ''hybrid prepaid-credit card,'' and the overdraft credit feature is defined as a ''covered separate credit feature.'' Related modifications to Regulation E include a revision to § 1005.10(e)(1) that prohibits issuers from requiring consumers to set up preauthorized EFTs to repay credit extended through a covered separate credit feature accessible by a hybrid prepaid-credit card. Section 1005.12(a) clarifies whether Regulation E or Regulation Z governs the issuance of a hybrid prepaid-credit card, and a consumer's liability and error resolution rights with respect to transactions that occur in connection with a prepaid account with a covered separate credit feature. Section 1005.17 clarifies that a covered separate credit feature accessible by a hybrid prepaid-credit card is not an ''overdraft service'' as that term has been defined under Regulation E in connection with checking accounts. Finally, § 1005.18(g) requires a financial institution to provide the same account terms, conditions, and features on a prepaid account without a covered separate credit feature that it provides on prepaid accounts in the same prepaid account program that have such a credit feature, except that the financial institution may impose higher fees or charges on a prepaid account with such a credit feature.

In finalizing these provisions, the Bureau has carefully considered the general comments summarized above expressing concerns about the Bureau's proposal to extend Regulation E coverage to prepaid accounts. The Bureau believes that comments opposing this approach generally fell into three categories. First, some commenters argued that the potential burden and risk to financial institutions of formally subjecting their prepaid account programs to Regulation E requirements would not produce substantial benefits for consumers because, among other reasons, many programs (particularly those for GPR cards) are already generally operated in compliance with the requirements for payroll cards in Regulation E. Second, some commenters were concerned that the rulemaking would define prepaid accounts broadly to include digital wallets and other emerging products, thereby chilling innovation in the payments market. Third, some commenters were primarily concerned about the burden and complexity of specific portions of the proposal. The Bureau has carefully considered the potential benefits and costs with regard to each of these sub-issues in deciding to finalize the rule.

As discussed in greater detail below in connection with the definition of prepaid account in § 1005.2(b)(3) that shapes the scope of coverage under the final rule, the Bureau believes that there is substantial benefit to consumers in subjecting prepaid accounts to Regulation E coverage even if some issuers are already generally in compliance. The Bureau notes that those issuers who are in fact in compliance will face a substantially lesser implementation burden than those who are not, as discussed in part VII below. Moreover, the Bureau believes that consumer protections are clearer and more effective when companies are accountable for complying with them as a matter of law, rather than by the choice or discretion of individual issuers. Indeed, the Bureau agrees with the consumer group commenters who asserted that uniform coverage of prepaid accounts under Regulation E will better equip and empower consumers to work with financial institutions to address problems with their prepaid accounts.

As discussed in greater detail in connection with § 1005.2(b)(3) below, the Bureau has carefully evaluated the benefits and costs of extending Regulation E to digital wallets and other similar products, as well as to government benefit accounts, payroll card accounts, GPR cards, and other types of prepaid products. The Bureau recognizes that there is some need for tailoring of particular provisions for prepaid accounts in certain circumstances, and has made revisions to various specific requirements to address such nuances. For example, the Bureau has revised proposed § 1005.19(c) such that the final rule does not require issuers to post on their publicly-available Web sites account agreements that are not offered to the general public, such as those for government benefit and payroll card accounts. Nevertheless, the Bureau believes that there is substantial value to both consumers and financial institutions in promoting consistent treatment where logical and appropriate across products. The Bureau has considered the possibility that providers might pass on increased costs to consumers or be more cautious in developing additional products or features, as discussed in part VII below, and believes that such concerns are relatively modest.

Likewise, the Bureau acknowledges industry's concerns about the volume of information financial institutions will have to disclose under the final rule's pre-acquisition disclosure regime, and the potential redundancies between the short form and long form disclosures. The Bureau continues to believe, however, that there is clear consumer benefit to ensuring consumers have access to both of these disclosures pre-acquisition because the disclosures play crucial but distinct roles. The Bureau designed and developed the short form disclosure to provide a concise snapshot of a prepaid account's key fees and features that is both easily noticeable and digestible by consumers. The Bureau believes that the overall standardization of the short form disclosure will facilitate consumers' ability to comparison shop among prepaid account programs. On the other hand, the Bureau also recognizes that providing only a subset of a prepaid account program's fee information on the short form might not provide all consumers with the information they need to make fully-informed acquisition decisions in all cases. For this reason, the final rule also requires the long form disclosure to be provided as a companion disclosure to the short form, offering a comprehensive repository of all of a prepaid account's fees and the conditions under which those fees could be imposed, along with certain other key information about the prepaid account. The Bureau notes that, under the alternative timing regime for disclosures provided in a retail location or by phone, a financial institution may provide the long form disclosure after acquisition so long as the short form contains information enabling the consumer to access the long form by telephone and on a Web site. In sum, the short form and the long form disclosures together provide consumers with an overview of the key information about the prepaid account and an unabridged list of fees and conditions and other important information about the account.

The Bureau has also considered concerns about burden and complexity both with regard to specific elements of the proposal and regarding coverage and compliance more broadly, and has made numerous adjustments to more finely calibrate the final rule to promote compliance and a smooth implementation process, as discussed in more detail with regard to individual provisions in the section-by-section analyses that follow. At the outset, the Bureau notes that the fact that a significant majority of these products are already substantially in compliance with existing Regulation E provisions applicable to payroll card accounts will reduce implementation burdens considerably. Furthermore, the Bureau notes that several provisions of the final rule have been adjusted to take more careful account of current industry practices, and as such should not require significant changes to existing procedures. For example, the Bureau has specifically clarified the timing of acquisition requirements for purposes of delivering pre-acquisition disclosures in final comment 18(b)(1)(i)–1 for payroll card accounts and prepaid accounts generally, and in final comments 15(c)–1 and –2 for government benefit accounts. These revisions are consistent with what the Bureau believes to be the current practices of many employers and government agencies and therefore should not require significant modifications to current procedures.

The Bureau also has incorporated certain burden-reducing measures to address various concerns raised by commenters about the burden on industry they asserted would result from the proposed pre-acquisition disclosure regime. These burden-alleviating modifications include the various changes to the additional fee types disclosures, including disclosure of two fees rather than three; a de minimis threshold; and reassessment and updating required every 24 months rather than 12. Other measures in the final rule that reduce burden include permitting reference in the short form disclosure for payroll card accounts (and government benefit accounts) to State-required information and other fee discounts and waivers pursuant to final § 1005.18(b)(2)(xiv)(B); permitting disclosure of the long form within other disclosures required by Regulation E pursuant to final § 1005.18(b)(7)(iii); and flexible updating of third-party fees in the long form disclosure pursuant to § 1005.18(b)(4)(ii).

As another example, the Bureau has modified the periodic statement alternative in § 1005.18(c)(1)(ii) to require at least 12 months of electronic account transaction history (instead of 18 months as proposed), which commenters explained many financial institutions already make available; the Bureau therefore believes any changes needed to comply with that portion of the rule for most financial institutions should be minimal. Likewise, implementing changes to provide at least 24 months of written account transaction history upon request pursuant to final § 1005.18(c)(1)(iii) should also not be problematic because the Bureau understands financial institutions generally retain several years of account transaction data in archived form. Relatedly, final § 1005.18(c)(5) requires financial institutions to provide a summary total of the fees assessed against the consumer's prepaid account for the prior calendar month and calendar year to date, but not summary totals of all deposits to and debits from a consumer's prepaid account as proposed.

Similarly, regarding the prepaid account agreement posting requirement, the Bureau believes the modification in final § 1005.19(c) to require issuers to post on their publicly-available Web sites only the agreements that are offered to the general public will reduce the number of agreements prepaid account issuers must post. In addition, this is generally consistent with the types of agreements that issuers post to their Web sites already, thus reducing the burden associated with this requirement relative to the proposal. Likewise, the Bureau believes that the revision in final § 1005.19(b)(1) to submit agreements to the Bureau on a rolling basis (instead of quarterly) should reduce the burden of the submission requirement on issuers relative to the proposal.

The Bureau has also given substantial thought to ways in which it can facilitate industry's implementation process for this final rule. For example, the Bureau has extended the general effective date of the rule from the proposed nine months following the publication of the rule in the **Federal Register** to approximately 12 months following the Bureau's issuance of this final rule. The Bureau has also eliminated the proposed requirement to pull and replace non-compliant prepaid account access devices and packaging materials after the effective date, which the Bureau believes obviates commenters' concerns about the environmental impact and cost of retrieving and destroying old packaging. The Bureau is also providing native design files for print and source code for web-based disclosures for all of the model and sample forms included in the final rule for the convenience of the prepaid industry and to help reduce development costs.[278] The Bureau also believes the accommodation set forth in new § 1005.18(h)(3) for financial institutions that do not have readily available the data necessary to comply in full with the periodic statement alternative or summary totals of fees requirements as of October 1, 2017

[278] These files are available at *www.consumerfinance.gov/prepaid-disclosure-files.*

should provide financial institutions with the additional flexibility in preparing for this final rule's effective date. Finally, the Bureau believes the delayed effective date of October 1, 2018 set forth in new § 1005.19(f)(2) for the prepaid account agreement submission requirement, as well as the other modifications made to the posting requirement in final § 1005.19, as discussed above, should help alleviate the time pressures prepaid account issuers might otherwise face when complying with those provisions.

In addition to these specific modifications to the rule to reduce burden to industry relative to the proposal, the Bureau is committed to working with industry to facilitate the transition process through regulatory implementation support and guidance, including by developing and providing a compliance guide to covered entities.[279]

In light of the modifications the Bureau has made to the rule as proposed, as well as the benefits of the final rule to consumers, the Bureau does not believe that further modifications to its general approach of regulating prepaid accounts under Regulation E—that is, beyond those specific modifications discussed in the following section-by-section analyses—are warranted. Nor does it believe that it would be appropriate to exempt from the final rule entire categories of financial institutions, as some commenters writing on behalf of smaller banks and credit unions suggested. The Bureau notes, however, that to the extent smaller banks or credit unions merely sell prepaid accounts issued by other entities, they are not covered financial institutions under Regulation E, since they do not satisfy either part of the definition of financial institution (*i.e.,* they do not hold prepaid accounts, nor do they issue prepaid accounts and agree with consumers to provide EFT services in connection with prepaid accounts).[280] As such, while some of the required changes may be implemented by third-party service providers, such as program managers or processors, the burden of and liability for complying with this final rule would generally fall on the financial institution that issues the prepaid accounts, not on the banks or credit unions selling those products. Moreover, to help alleviate some of the burdens anticipated by smaller banks and credit unions in this situation with respect to disclosures, the Bureau has expanded the alternative timing regime for pre-acquisition disclosures that applies to prepaid accounts acquired in person to apply to any retail location, not just a retail store—under the final rule, therefore, banks and credit unions that sell other financial institutions' prepaid accounts in their branches will be able to provide the long form disclosure after acquisition, provided they comply with the requirements set forth in final § 1005.18(b)(1)(ii).

With respect to the comment requesting the Bureau to increase its supervisory authority over non-depository financial institutions in the market for prepaid accounts, the Bureau notes that this final rule's requirements apply equally to depositories and non-depositories alike. The Bureau will continue to monitor the markets, and may consider future rulemakings aimed at defining larger participants in this or other relevant markets, pursuant to its authority under section 1024 of the Dodd-Frank Act.

With respect to specific requests made by consumer groups for additional requirements or prohibitions, the Bureau notes that many of the requests go significantly beyond the scope of what the Bureau contemplated in the proposed rule. Specifically, requests to ban certain fees, either in general or in the context of particular types of cards, are outside the scope of this rulemaking, and as such, the Bureau declines to include any such blanket fee bans in the final rule. Nonetheless, the Bureau recognizes commenters' concerns regarding financial institutions' fee practices, particularly with respect to practices that disproportionately impact vulnerable populations, such as formerly incarcerated individuals, and will continue to monitor these practices going forward. Likewise, the final rule does not address financial institutions' practices with respect to placing holds on funds pending clearance of a transaction.[281]

The request that the Bureau ban arbitration or class action waivers in prepaid account agreements is also outside the scope of this rulemaking. The Bureau notes, however, that if finalized as proposed, the Bureau's recent Arbitration Agreements NPRM would prohibit covered providers of certain consumer financial products and services from using an arbitration agreement to bar the consumer from filing or participating in a class action with respect to the covered consumer financial product or service.[282]

Finally, with respect to consumer group commenters' requests that the Bureau require or encourage financial institutions to add savings or credit building features to prepaid accounts, the Bureau agrees with commenters that such features can be beneficial to consumers. Linked savings programs, for instance, may allow participating consumers to better manage their current spending and set aside funds for planned or unexpected expenses. Nevertheless, the Bureau does not believe it would be appropriate to mandate one at this juncture. The Bureau will continue to encourage financial institutions to expand their offerings in this area, in such a way as to provide protections and opportunities for consumers.[283]

Other Regulation E Subpart A Provisions Applicable to Prepaid Accounts

The Bureau explained in the proposal that unless as otherwise provided under the proposed rule, the requirements of current subpart A of Regulation E would extend to prepaid accounts in the same manner they currently apply to payroll card accounts. This aspect of the proposal is adopted as proposed.

A law firm commenter representing a coalition of prepaid issuers asserted that the Bureau should permit financial institutions to provide all required disclosures related to prepaid accounts electronically regardless of whether a financial institution complies with the Electronic Signatures in Global and National Commerce Act (E-Sign Act),[284] which generally requires consumer consent and a demonstration that the

[279] Under section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under 5 U.S.C. 605(b), the Bureau is required to publish a small entity compliance guide. As set forth in part VIII below, the Bureau has certified that this rule does not require a final regulatory flexibility analysis. Accordingly, the Bureau is not required under SBREFA to publish a small entity compliance guide, but nonetheless intends to do so to assist industry with implementation and compliance.

Regulatory implementation materials related to this final rule are available at *http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid.*

[280] *See* § 1005.2(i).

[281] The Bureau notes that the U.S. transition from magnetic strip to EMV chip payment cards is expected to reduce the incidence of card-related fraud. As such, account holds related to fraud prevention may likewise reduce in amount or frequency.

[282] 81 FR 32830 (May 24, 2016). The proposal would also facilitate monitoring of consumer arbitrations by requiring providers to report certain information to the Bureau in connection with individual arbitration proceedings.

[283] *See also* Press Release, CFPB, *CFPB Project Catalyst Study Finds Savings Offers Double the Number of Consumers Saving* (Sept. 29, 2016), *available at http://www.consumerfinance.gov/about-us/newsroom/cfpb-project-catalyst-study-finds-savings-offers-double-number-consumers-saving/.*

[284] 15 U.S.C. 7001 *et seq.*

consumer can receive materials electronically before written disclosures can be delivered electronically.

In general, the Bureau believes that existing § 1005.4(a)(1) should apply to prepaid accounts. Section 1005.4(a)(1) permits the electronic delivery of disclosures required pursuant to subpart A of Regulation E, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. However, the final rule permits financial institutions to provide the short form and long form disclosures electronically without E-Sign consent for prepaid accounts that are acquired electronically, including via a mobile device, to ensure that consumers receive relevant disclosure information at the appropriate time. During the pre-acquisition time period for prepaid accounts, the Bureau believes that it is important for consumers who decide to go online to acquire a prepaid account to see the relevant disclosures in electronic form. The Bureau believes that many consumers may decide whether to acquire a particular prepaid account after doing research online, and that if they are not able to see disclosures on the prepaid account program's Web site, they cannot make an informed acquisition decision. But the fact that the consumer has used the Web site once to acquire the account does not mean that the consumer intends to receive all disclosures later in the account relationship via Web site, absent a formal process by which the consumer is informed of and consents to that delivery method. And with accounts acquired through other means, the Bureau similarly believes it is important that consumers have an opportunity to consent to electronic delivery of disclosures in general. Accordingly, the Bureau declines to permit financial institutions to provide all required disclosures related to prepaid accounts electronically regardless of whether a financial institution complies with the E-Sign Act.

Finally, current § 1005.10(c) provides that a consumer can revoke authorization of preauthorized EFTs orally or in writing. If the consumer gives the stop payment request orally, a financial institution may require the consumer to then give written confirmation, or else the oral stop payment order will cease to bind the financial institution. A consumer group commenter requested that the Bureau clarify that consumers can revoke their authorization of preauthorized EFTs in writing, electronically, or orally in any manner, as long as the method provides a consumer's creditor with reasonable notice and opportunity to act. The Bureau declines to modify § 1005.10(c) in this way, as doing so would be outside of the scope of this rulemaking insofar as any such clarification would presumably apply to all Regulation E accounts, not just prepaid accounts.

The Bureau notes that among the other various Regulation E provisions that will apply to prepaid accounts are the limitations on the unsolicited issuance of an access device in existing § 1005.5 and the requirement in existing (§ 1005.13) to retain records that evidence compliance with the requirements of EFTA and Regulation E.

Section 1005.2 Definitions

2(b) Account

2(b)(2) Bona Fide Trust Account

The current definition of account in Regulation E includes an exception for bona fide trust accounts.[285] To accommodate the proposed definition for the term prepaid account and a proposed adjustment to the definition of payroll card account, the Bureau proposed to renumber the exception for bona fide trust accounts as § 1005.2(b)(2) without any substantive changes to the exception. The Bureau did not receive any comments on this portion of the proposal and is finalizing this change as proposed. As explained in the proposal, to accommodate this 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

The Bureau's Proposal

The Bureau proposed several changes to § 1005.2(b), as discussed below. In sum, these changes would have created a broad new defined term, ''prepaid account,'' as a subcategory of the definition of ''account'' in existing § 1005.2(b)(1), and thus subject to Regulation E. As discussed in detail in the proposal, existing § 1005.2(b)(1) defines an ''account'' generally 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. EFTA and existing Regulation E contain explicit provisions applying specifically to payroll card accounts, as well as accounts used for the distribution of government benefits in existing §§ 1005.18 and 1005.15, respectively. Gift cards, although not included in the § 1005.2(b) definition of account, are addressed specifically in § 1005.20. The Board, in adopting rules to include payroll card accounts within the ambit of Regulation E, explicitly stated 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.[286] As a result, some regulators, the prepaid industry, and others had interpreted Regulation E as not applying to various types of prepaid products that are not payroll card accounts, accounts used for the distribution of government benefits, or gift cards.[287]

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 not already specifically identified in Regulation E could or should be covered by the regulation. It first considered the applicability of EFTA to prepaid products. EFTA, among other things, governs transactions that involve an EFT 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.'' [288] Insofar as the statute defines account broadly to include any other asset account and for the other reasons discussed below, the Bureau believed it was reasonable to interpret ''account'' in EFTA to include prepaid accounts. Thus, it proposed 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 proposed to modify the definition of ''account'' under § 1005.2(b) to create a specific sub-definition for prepaid account.

The Bureau believed that proposing to apply Regulation E to prepaid accounts was appropriate for several reasons. First, it concluded that consumers' use of prepaid products had evolved significantly since 2006, when the Board last examined the issue in the course of its payroll card account

[285] *See* existing § 1005.2(b)(3).

[286] 71 FR 51437, 51441 (Aug. 30, 2006).

[287] *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.

[288] EFTA section 903(2), 15 U.S.C. 1693a(2).

rulemaking. The Bureau noted that a substantial number of consumers could and do use prepaid accounts that involve substantial sums of money, in part because many have wages and/or benefits loaded onto prepaid cards through direct deposit.[289] In addition, consumers use prepaid cards for a variety of purposes, including making purchases, paying bills, and receiving payments.[290] Indeed, the Bureau noted that some consumers without other transaction accounts depend on prepaid cards to meet all of their payment account needs.[291] As a result, the Bureau believed that such products should be considered consumer asset accounts subject to EFTA and Regulation E.

Second, the Bureau concluded that inclusion aligned appropriately with the purposes of EFTA. The legislative history of EFTA indicates that Congress's primary goal was to protect consumers using EFT 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. Likewise, in the proposal, the Bureau stated its belief that it was appropriate to establish such a framework for prepaid accounts, because doing so would benefit both consumers and providers.[292]

In addition, were it to finalize the proposal, the Bureau believed that consumers would be better able to assess the risks of using prepaid products. Indeed, the Bureau was concerned that because prepaid cards could 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. The Bureau stated its belief that the proposal, if finalized, would serve to make those protections more consistent and eliminate a regulatory gap.

With these considerations in mind, the Bureau proposed to bring a broad range of prepaid products within the ambit of Regulation E and also proposed to modify certain substantive provisions of Regulation E as appropriate for different types of prepaid accounts. To facilitate this, the Bureau proposed to add a definition of ''prepaid account,'' the specifics of which are discussed in greater detail in the section-by-section analyses that follow, to the existing definition of ''account'' in § 1005.2(b). In sum, the proposed definition would have created a broad general umbrella definition for prepaid accounts that are issued on a prepaid basis or loaded with funds thereafter and are usable to conduct transactions with merchants or at an ATM, or usable to facilitate P2P transfers. The definition would not have depended on whether such accounts were reloadable or non-reloadable. Payroll card accounts and government benefit accounts would have been subsumed within the broader definition, though still enumerated as specific subcategories for purposes of tailoring certain substantive rules. The Bureau noted that while not all prepaid products covered by the proposed definition could or would be used as full and ongoing transaction account substitutes, it was concerned that to try to carve out very specific types of products that were, or could be, used for short-term limited purposes would create substantial complexity and could result in consumer confusion as to what protections would apply to otherwise indistinguishable products. The proposed definition would have excluded accounts that were already subject to Regulation E.[293]

Comments Received

As with the comments the Bureau received in response to the ANPR, most commenters to the proposal (industry, consumer advocacy groups, and others) did not object to the general concept of bringing prepaid products within the ambit of Regulation E.[294] While there were some concerns from industry and others, discussed in more detail below, about exactly which types of prepaid products the Bureau might subject to Regulation E, most commenters favored inclusion of GPR cards. Among other reasons, several industry 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.

A number of industry commenters, however, took issue with the Bureau's proposal to define prepaid account more broadly than just GPR cards. A number of these commenters, including program managers, a trade association, and a law firm writing on behalf of a coalition of prepaid issuers, stated that the scope of the proposal's coverage was a significant departure from the Bureau's Prepaid ANPR, which they noted focused exclusively on GPR cards and like products. A number of commenters, including trade associations and an issuing bank, urged the Bureau to focus its rulemaking on products that could be used in the same ways as traditional transaction accounts. The commenters contrasted such products, which they contended include GPR cards, with products that have limitations on use, such as non-reloadable cards or so-called reload packs, which are cards that can only be used to load funds onto GPR cards. According to the commenters, products that had limited uses or functions were generally characterized by a more limited relationship between the issuer and consumer, which made these types of products inherently riskier—from a fraud-prevention perspective—and less profitable to financial institutions than GPR cards. The commenters asserted that if these more limited product types were covered under the definition of prepaid account, the cost of adding Regulation E protections may cause issuers of those products to discontinue offering them. A number of trade associations advocated that the Bureau specifically exclude non-reloadable cards for these reasons. Similarly, these and other commenters urged the Bureau to exclude reload packs.

Other industry commenters objected to the Bureau's decision to cover ''innovative'' payment products, such as

[289] *See, e.g.,* Fed. Deposit Ins. Corp., *2013 FDIC National Survey of Unbanked and Underbanked Households,* at 55 (Oct. 2014), *available at https://www.fdic.gov/householdsurvey/2013report.pdf* (2013 FDIC Survey) (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).

[290] *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).

[291] *See, e.g., id.* (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).

[292] 79 FR 77102, 77127 (Dec. 23, 2014).

[293] *Id.* at 77127–28.

[294] A trade association representing credit unions asserted that the Bureau lacked the statutory authority to extend Regulation E to GPR cards. The commenter argued that, because Congress expressly exempted GPR cards from the provisions of the Credit CARD Act that apply to gift cards, the Bureau lacks the authority to extend the requirements of all of Regulation E to prepaid cards absent a statutory amendment to EFTA to define ''account'' to include prepaid cards. The Bureau disagrees. The provisions in the Credit CARD Act that apply to gift cards were specific requirements that Congress mandated for the unique context of gift cards. These provisions do not take away from the Bureau's authority and discretion to regulate accounts more generally under EFTA as a whole, and the Bureau believes that ''account'' is reasonably interpreted to include prepaid accounts.

digital wallets capable of storing funds, mobile and electronic payments, mobile applications, and other products that were being or may one day be developed. A digital wallet provider argued for an explicit exemption for digital wallets, which it defined as card, code, or other device that is capable of accessing two or more payment credentials for purposes of making payment for goods and services at multiple unaffiliated merchants. According to the commenter, digital wallets and GPR cards should not be encompassed within the same regulatory regime because they have fundamentally different consumer use cases and functionalities, and as such are not viewed by consumers as interchangeable. For example, the commenter asserted, in contrast with GPR cards, digital wallets are used primarily to access payment credentials, not funds. The commenter further stated that, to the extent digital wallets store funds, such funds are almost always loaded onto the wallets as a result of a P2P transaction, not because the accountholder purposefully loads the wallet with funds for future use. In addition, the commenter argued, digital wallets do not present the same risks as prepaid accounts—specifically, digital wallets charge lower fees than GPR cards and do not offer overdraft features.

Other commenters, including an issuing bank, several industry trade associations, a think tank, and a group of members of Congress, argued that if the Bureau's prepaid accounts rule applied to such products, it would stifle growth and innovation by imposing a one-size-fits-all regime on a diverse and evolving market. These commenters advocated that the Bureau take an incremental approach to broadening the definition of prepaid account by including GPR cards in this final rule, and reevaluating the possible addition of other products at a later time.

A subset of these commenters, joined by a number of additional trade associations, a payment network, and an issuing bank, argued that the proposed definition was ambiguous and vague. Specifically, these commenters argued that the proposed definition did not draw a sufficiently clear line between accounts that were already covered by Regulation E—namely, demand deposit (checking) accounts, savings accounts, and other consumer asset accounts—and accounts that would newly be covered as prepaid accounts. These commenters expressed concern that under the proposed definition certain accounts could qualify as both prepaid accounts subject to the augmented Regulation E requirements of the proposal and traditional bank accounts (or other consumer asset accounts) subject to existing Regulation E requirements. Relatedly, other commenters stated that certain prepaid account issuers already considered their products covered under Regulation E as consumer asset accounts. As a result, commenters asserted, essentially identical products could be subject to different consumer protection regimes, resulting in inconsistent consumer protections for similar products and heightened compliance risk stemming from industry's uncertainty regarding which regime their products fall under. These commenters urged the Bureau to create a clearer demarcation between prepaid accounts and other types of accounts. Specifically, commenters proposed that the Bureau add greater clarity by limiting the definition of prepaid account. They had various suggestions for how to limit the definition, including, *inter alia,* limiting it to GPR cards, accounts that can only be accessed by a physical card, accounts that are marketed and labeled as prepaid accounts, accounts held by a financial institution in an omnibus (or pooled) account structure, or accounts featuring some combination of these characteristics.

Consumer groups likewise 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 their prepaid products lack certain protections offered by other transaction accounts. The consumer groups diverged from industry commenters, however, by largely supporting the breadth of the Bureau's proposed definition. A number of groups agreed with the Bureau's decision to include both reloadable and non-reloadable accounts in the proposed definition, arguing that the focus of the definition should be on how the account is used, not on how it is loaded. A think tank argued that consumer usage supported covering non-reloadable cards, noting that one-third of prepaid account users in its survey do not reuse their account after the initial amount of funds was depleted. A number of consumer groups advocated that the Bureau expand the proposed definition further to include specific types of non-reloadable cards loaded by third parties, such as student loan disbursement cards and prison release cards. Other consumer groups argued that a broad definition was necessary to accommodate new and changing products. These commenters supported the Bureau's decision to cover mobile and virtual payment systems, arguing that, as payment systems evolve, it was important not to adopt a narrow definition that would permit evasion.

Some commenters also urged the Bureau to expand the scope of the definition of government benefit account so that it applied to more categories of government benefit programs. Those comments and the Bureau's response thereto are discussed in greater detail in the section-by-section analysis of § 1005.15(a) below.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the rule to define the term ''account'' under Regulation E to include a ''prepaid account,'' while making several revisions to the proposed definition of prepaid account, as summarized below and discussed in greater detail in the section-by-section analyses that follow. EFTA section 903(2) defines an account broadly 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.'' 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. In general, the Bureau declines to narrow the scope of the proposed definition to cover, for example, only GPR cards, reloadable accounts, or cards that otherwise function as transaction account substitutes, as some commenters had requested.

As it stated in the proposal, the Bureau recognizes that not all types of prepaid products lend themselves to permanent use as transaction account substitutes. Nevertheless, the Bureau continues to believe that the features of non-GPR card prepaid products as well as the ways consumers can and do use those products warrant Regulation E protection and that the prepaid regime provided in this final rule is the most appropriate regime to apply. Consumers can receive significant disbursements of funds—such as tax refunds or pay-outs of home insurance proceeds—on non-reloadable prepaid cards. They can then use such cards for a variety of purposes, including making purchases and paying bills, for which error resolution and other Regulation E protections could be important.[295] Indeed, even though some

[295] *See, e.g.,* 2013 FDIC Survey at 34 (finding that for all households that used prepaid debit cards in

Continued

types of prepaid cards may not be reloadable, consumers who lack other transaction accounts may depend entirely on such cards to meet their payment account needs, at least until the cards are spent down.[296] Likewise, consumers increasingly use digital wallets to conduct daily financial transactions for which Regulation E protections are important. The Bureau is not convinced by the argument that digital wallets used in this fashion are fundamentally dissimilar to other types of prepaid accounts. Indeed, to the extent that they are used to access funds the consumer has deposited into the account in advance, the Bureau believes digital wallets operate very much like a prepaid account. The Bureau notes that the fact that digital wallets currently on the market may not charge usage fees, as one commenter asserted, may not hold true in the future, especially if these products become more widely used and the features and services offered broaden.[297]

The Bureau is thus finalizing a definition of prepaid account that covers a range of products including GPR cards, as well as other products that may not be used as transaction account substitutes, such as certain non-reloadable accounts and digital wallets. The Bureau recognizes that the scope of the final rule's coverage extends beyond the types of accounts that were the primary focus of in the Prepaid ANPR, as some commenters remarked. The Bureau notes, however, that the ANPR also asked broader questions regarding the potential definitional scope for a prepaid rulemaking. While an ANPR is not a required part of the rulemaking process under the Administrative Procedures Act, the over 220 comments received in response helped inform the scope the Bureau's proposal. The Bureau notes in addition, and in response to comments from consumer groups, that the final rule's definition is broad enough to cover prepaid accounts used by consumers in various scenarios and for various purposes, so long as those accounts meet the specific provisions of the definition, as set forth below. This would include, for example, student loan disbursement cards and prison release cards that meet the other criteria set forth in the definition.

At the same time, the Bureau appreciates commenters' concerns that the single broad proposed umbrella definition could have created too much uncertainty as to treatment of products that were already subject to Regulation E prior to this rulemaking, and their concern that certain additional narrow categories of products should be excluded from the definition due to various unique circumstances. The Bureau has considered various avenues for addressing these concerns, including, as suggested by commenters, limiting coverage under the final rule to only GPR cards or to accounts held by a financial institution in an omnibus (or pooled) structure. As set forth in greater detail below, the Bureau has decided to add further clarity to the proposed definition by adding a reference to the way the account is marketed or labeled, as well as to the account's primary function. The Bureau is not finalizing a definition that would limit coverage to only GPR cards, as stated above, because it continues to believe that the features of non-GPR card prepaid products as well as the ways consumers can and do use those products warrant Regulation E protection. In addition, the Bureau declines to limit coverage under the definition to accounts held in a pooled account structure, because the Bureau believes that the characteristics that make an account a prepaid account should not be dependent on the product's back-office infrastructure.

In addition to minor changes to streamline the definition and sequence of the regulation, the Bureau has reorganized the structure of the definition and added certain wording to the final rule that is designed to more cleanly differentiate products that are subject to this final rule from those that are subject to general Regulation E. First, to streamline the definition and to eliminate redundancies, the Bureau is omitting the phrase ''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'' from final § 1005.2(b)(3)(i). Second, the Bureau is clarifying the scope of the definition by adding a reference to the way the account is marketed or labeled, as well as to the account's primary function. Under the final definition, therefore, an account is a prepaid account if it is a payroll card account or government benefit account; *or* it is marketed or labeled as ''prepaid,'' provided it is redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at ATMs; *or* it meets *all* of the following criteria: (a) It is issued on a prepaid basis in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter; (b) its primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct P2P transfers; and (c) it is not a checking account, share draft account, or NOW account.

The final rule also contains several additional exclusions from the definition of prepaid account for: (1) Accounts loaded only with funds from a dependent care assistance program or a transit or parking reimbursement arrangement; (2) accounts that are directly or indirectly established through a third party and loaded only with qualified disaster relief payments; and (3) the P2P functionality of accounts established by or through the U.S. government whose primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities. Other than these clarifications and exclusions discussed herein, the Bureau does not intend the changed language in the final rule to significantly alter the scope of the proposed definition of the term prepaid account.

2(b)(3)(i)

Proposed § 1005.2(b)(3)(i) would have defined the term prepaid account as a card, code, or other device, not otherwise an account under § 1005.2(b)(1), that was established primarily for personal, family, or household purposes, and that satisfied three additional criteria as to how the account was loaded and used, as laid out in proposed § 1005.2(b)(3)(i)(A) through (C), which are discussed separately below. This proposed definition of prepaid account was based on the formulation for the definition of general-use prepaid card in the Gift Card Rule (§ 1005.20). Proposed comment 2(b)(3)(i)–1 would have clarified that for purposes of subpart A of Regulation E, except for § 1005.17 (requirements for overdraft services), the term ''debit card'' also included a prepaid card. Proposed comment 2(b)(3)(i)–2 would have explained that proposed § 1005.2(b)(3) applied only to cards, codes, or other devices that were acquired by or provided to a consumer primarily for personal, family, or household purposes. For further guidance interpreting the phrase ''card, code, or other device,'' proposed comment 2(b)(3)(i)–2 would have

the last 12 months, 47.6 percent did so to pay for everyday purchases or to pay bills and 31.8 percent did so to receive payments).

[296] *See, e.g., id.* (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).

[297] The same commenter argued in the alternative that, if digital wallets were not explicitly exempted from the definition of prepaid account, they be exempted from the pre-acquisition disclosure regime. That request, and the Bureau's response to it, are discussed in greater detail below.

referred to existing comments 20(a)–4 and –5.

The Bureau received comment from an industry trade association asserting that defining a prepaid account as a ''card, code, or other device'' may conflate the actual covered account with the access device that the consumer can use to transact or withdraw from that account. Upon further consideration, the Bureau has revised § 1005.2(b)(3)(i) to remove the phrase ''card, code, or other device,'' so that the definition does not conflate the access device that may be used to access the underlying account with the account itself. The Bureau intends the definition of prepaid account to cover the account itself, not the device used to access it.

The Bureau has also removed the reference to the prepaid account being an account that is ''not otherwise an account under paragraph (b)(1) of this section.'' As discussed below, the prepaid account definition's interaction with the existing definition of account in Regulation E is now addressed in other paragraphs of final § 1005.2(b)(3)(i)(D). Specifically, excluded from the definition of prepaid account by new § 1005.2(b)(3)(i)(D)(*3*) are checking accounts, share draft accounts, and NOW accounts, while commentary to final § 1005.2(b)(3)(i) clarifies that other types of accounts, such as savings accounts, are excluded from the definition of prepaid account because they do not have the same primary functions.

The Bureau has revised comment 2(b)(3)(i)–1 to state that for purposes of subpart A of Regulation E, unless where otherwise specified, the term debit card also includes a prepaid card. The Bureau has removed the proposed reference to § 1005.17 in this paragraph, as the Bureau's revisions to § 1005.17, discussed below, have rendered its reference here unnecessary.

Finally, the Bureau has also removed the phrase ''established primarily for personal, family, or household purposes'' from the definition of prepaid account. Upon further consideration, the Bureau believes that phrase is unnecessary here as it already appears in the main definition of account in § 1005.2(b)(1), and prepaid accounts are expressly included as a subcategory within that broader definition. The Bureau has likewise removed proposed comment 2(b)(3)(i)–2, which would have provided guidance with respect to the meaning of ''established primarily for personal, family, or household purposes.''

2(b)(3)(i)(A)

As discussed above, the proposed rule would have created a broad general definition of prepaid account that hinged in significant part on how the account could be loaded and used, as set forth in proposed § 1005.2(b)(3)(i)(A) through (C). Rather than relying on a single broad umbrella definition, the Bureau has concluded in response to commenters' concerns about ambiguity as to the scope of coverage that it would provide greater clarity to specify several types of products that are included within the general definition of prepaid account, and then specify an additional, narrower category for the balance of covered products by reference to those products' functionality. Accordingly, the final rule has been reorganized to list the specific categories of products first. The reorganization is not intended to substantively alter the scope of the proposed prepaid account definition's coverage.

Final § 1005.2(b)(3)(i)(A) defines the first such category, payroll card accounts. As discussed above, Regulation E currently contains provisions specific to payroll card accounts and defines such accounts.[298] Insofar as the Bureau was generally proposing to adapt existing payroll card account rules to prepaid accounts in § 1005.18 (which currently addresses only payroll card accounts), payroll card accounts would have been subsumed within the broad general definition of prepaid account. Nevertheless, the Bureau believed that because there are certain provisions of Regulation E that would remain specific to payroll card accounts, it was appropriate to propose to maintain the term payroll card account as a standalone sub-definition of prepaid account. Specifically, proposed § 1005.2(b)(3)(ii) would have provided that the term ''prepaid account'' included a ''payroll card account,'' and would have restated the existing payroll card account definition.

In addition, the Bureau proposed to renumber existing comment 2(b)–2, which concerns certain employment-related cards not covered as payroll card accounts, as comment 2(b)(3)(ii)–1. The Bureau proposed to add to comment 2(b)(3)(ii)–1 an explanation that would have clarified that, while 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 definition of that term in proposed § 1005.2(b)(3) were satisfied. Similar to existing comment 2(b)–2, proposed comment 2(b)(3)(ii)–1 would have also stated that all transactions involving the transfer of funds to or from a payroll card account or prepaid account were covered by the regulation, even if a particular transaction involved payment of a bonus, other incentive-based payment, or reimbursement, or the transaction did not represent a transfer of wages, salary, or other employee compensation.

The Bureau did not receive any comments on this portion of the proposal, and as such, is finalizing the regulatory text and commentary largely as proposed, with minor modifications in the commentary for clarity and consistency with terms used elsewhere in this final rule.[299] To accommodate several substantive changes to the definition of prepaid account, however, the Bureau has renumbered several sub-sections of § 1005.2(b)(3), including § 1005.2(b)(3)(ii) and its related commentary. Under the new numbering scheme, proposed § 1005.2(b)(3)(ii) is now final § 1005.2(b)(3)(i)(A) and proposed comment 2(b)(3)(ii)–1 is accordingly renumbered as comment 2(b)(3)(i)–2.

2(b)(3)(i)(B)

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 stated its belief in the proposal that given the other modifications to Regulation E proposed therein, it was 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 proposed to have § 1005.2(b)(3)(iii) state that the term

[298] *See* existing § 1005.2(b)(2).

[299] The Bureau received several comments from industry requesting that the Bureau maintain a separate section for payroll card accounts, rather than treat payroll card accounts in § 1005.18, which, as the Bureau proposed, will become the general prepaid account section. Those comments, and the Bureau's response to them, are summarized in the section-by-section analysis of § 1005.18(a) below.

prepaid account includes a government benefit account, as defined in existing § 1005.15(a)(2).

The Bureau did not receive any comments on this portion of the proposal.[300] Consistent with its overall approach in specifying particular product types that are ''prepaid accounts'' before defining an additional, narrower category for the balance of covered accounts, the Bureau is finalizing the proposed language concerning government benefit accounts as § 1005.2(b)(3)(i)(B) without any other changes. Relatedly, as discussed in the section-by-section analysis of § 1005.2(b)(3)(ii)(E) below, the Bureau has added an exclusion from the definition of government benefit accounts for accounts used to distribute needs-tested benefits in a program established by under State or local law or administered by a State or local agency. That exclusion is part of the existing definition of government benefit account in § 1005.15(a)(2), and the Bureau believes it should be repeated as part of final § 1005.2(b)(3).

2(b)(3)(i)(C)

As noted above, several commenters requested that the Bureau revise the proposed definition of prepaid account to add greater certainty as to the scope of coverage. One commenter, a trade association, specifically suggested that the Bureau modify the definition to only apply to products that are expressly marketed and labeled as ''prepaid.'' The Bureau agrees that the addition of a provision focusing on marketing and labeling would provide greater clarity. The Bureau believes that all or most GPR cards are currently marketed or labeled as ''prepaid,'' either on the packaging or display of the card or in related advertising. As such, the Bureau believes that most, if not all, GPR cards will qualify as prepaid accounts under this provision of the definition. In addition, the Bureau believes that, in order to prevent consumer confusion and conform to consumer expectations, accounts that are marketed or labeled as ''prepaid'' should be accompanied by the same disclosures and protections that consumers will expect prepaid accounts to provide pursuant to this final rule.

The Bureau is thus adopting new § 1005.2(b)(3)(i)(C) to define as a prepaid account an account that is marketed or labeled as ''prepaid.'' The Bureau understands, however, that there are certain products that are intended for specific, limited purposes—for example, prepaid phone cards—that may use the term ''prepaid'' for marketing or labeling purposes, but which the Bureau did not intend to include under the definition of prepaid account by function of this prong. The Bureau is clarifying, therefore, that in order to qualify as a prepaid account under the ''marketed or labeled'' prong, an account must also be redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at ATMs. Accordingly, although products such as prepaid phone cards are marketed or labeled as ''prepaid,'' they would not qualify as prepaid accounts under this prong because they are not redeemable at multiple, unaffiliated merchants or usable at ATMs.

To clarify the meaning of ''marketed or labeled,'' the Bureau is also adopting new comment 2(b)(3)(i)–3. That comment, which draws on similar existing commentary to Regulation E concerning the marketing and labeling of gift cards,[301] clarifies that the term ''marketed or labeled as 'prepaid' '' means promoting or advertising an account using the term ''prepaid.'' For example, an account is marketed or labeled as prepaid if the term ''prepaid'' appears on the access device associated with the account or the access device's packaging materials, or on a display, advertisement, or other publication to promote purchase or use of the account. The comment further clarifies that an account may be marketed or labeled as prepaid if the financial institution, its service provider, including a program manager, or the payment network on which an access device for the account is used, promotes or advertises, or contracts with another party to promote or advertise, the account using the label ''prepaid.'' Finally, the comment clarifies that a product or service that is marketed or labeled as prepaid is not a ''prepaid account'' if it does not otherwise meet the definition of account in § 1005.2(b)(1).

2(b)(3)(i)(D)

Final § 1005.2(b)(3)(i)(D) contains a descriptive, general definition of the term ''prepaid account'' that largely preserves the structure of the proposed definition, with an increased focus on the account's functionality for greater clarity. The provision builds on elements of proposed § 1005.2(b)(3)(i)(A) and (B), which focused on whether an account was issued to a consumer on a prepaid basis or was capable of being loaded with funds thereafter and whether the account was redeemable upon presentation at multiple, unaffiliated merchants for goods or services, usable at ATMs, or usable for P2P transfers. To constitute a prepaid account under final § 1005.2(b)(3)(i)(D), an account must satisfy all three of the prongs of final § 1005.2(b)(3)(i)(D)(*1*) through (*3*), which are discussed in turn below.

2(b)(3)(i)(D)(1)

The Bureau's Proposal

Proposed § 1005.2(b)(3)(i)(A) would have defined 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 expanded 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),[302] by also including a prepaid product that was ''not issued on a prepaid basis but capable of being loaded with funds thereafter.''

As it explained in the proposal, the Bureau sought to ensure that accounts that are not loaded at acquisition are nonetheless eligible to be prepaid accounts. The Bureau proposed this approach to address concerns that prepaid providers could restructure existing products to avoid coverage by the proposed rule if they were to separate account acquisition from initial funding. In addition, the Bureau believed the proposed provision would have ensured that consumers who used prepaid accounts received the protections in the 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 have clarified that to be ''issued on a prepaid basis,'' a prepaid account had to be loaded with funds when it was first provided to the consumer for use. For example, if a consumer purchased a prepaid account and provided funds that were loaded onto a card at the time of purchase, the prepaid account would have been issued on a prepaid basis. A prepaid account offered for sale in a

[300] Comments received recommending that the Bureau expand the reach of the term government benefit account, and the Bureau's response thereto, are discussed in the section-by-section analysis of § 1005.15(a) below.

[301] *See* comment 20(b)(2)–2.

[302] 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.''

retail store would not have been issued on a prepaid basis until it was purchased by the consumer.

Proposed comment 2(b)(3)(i)–4 would have explained that a prepaid account that was not issued on a prepaid basis but was capable of being loaded with funds thereafter included a prepaid card issued to a consumer with a zero balance to which funds could be loaded by the consumer or a third party subsequent to issuance. This would not have included a product that could never store funds, such as a digital wallet that only held payment credentials for other accounts.

Proposed comment 2(b)(3)(i)–5 would have clarified that to satisfy proposed § 1005.2(b)(3)(i)(A), a prepaid account would have to either be issued on a prepaid basis or be capable of being loaded with funds. This would have meant that the prepaid account had to be capable of holding funds, rather than merely acting as a pass-through vehicle. For example, if a product was only capable of storing a consumer's payment credentials for other accounts but was incapable of having funds stored on it, such a product would not have been a prepaid account. However, if a product allowed a consumer to transfer funds, which could be stored before the consumer designated a destination for the funds, the product would have satisfied proposed § 1005.2(b)(3)(i)(A).

With these examples, the Bureau sought to make clear that it did not intend to extend the proposed definition of prepaid account to a product that could 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 have been considered a prepaid account under the proposed rule. If, however, a digital wallet allowed a consumer to store funds in it directly, then the digital wallet would have been a prepaid account if the other criteria of the proposed definition were also met. Finally, proposed comment 2(b)(3)(i)–6 would have provided that prepaid accounts did not have to be reloadable by the consumer or a third party.

Comments Received

As discussed above, some industry commenters urged the Bureau to limit the final rule to those products that could be reloaded by a consumer, arguing that such products were more likely to act as transaction account substitutes. Those comments are summarized in the section-by-section analysis of § 1005.2(b)(3) above. In short, these commenters argued that, to the extent the Bureau was seeking to create a uniform regulatory regime for like products, non-reloadable products did not function like other accounts already covered by Regulation E and thus should be excluded from coverage. They noted, for example, that non-reloadable cards were not generally accompanied by an expectation of a continued relationship between the financial institution and the consumer. In addition, these commenters argued, such accounts were largely used as a substitute for cash, such that adding disclosure and other substantive requirements to these cards would add unnecessary complexity that would far outweigh consumer expectations or needs with respect to these products. Commenters also noted that with respect to many types of non-reloadable cards, such as cards used to disburse insurance claim proceeds or tax refunds, consumers did not in fact have a choice with respect to which card they received. Comparison shopping in such circumstances, they argued, was unhelpful. Finally, with respect to the Bureau's proposed rationale that including non-reloadable accounts in the definition of prepaid account would help prevent evasion, a trade association stated that they believed that such evasion was unlikely, and further argued that the Bureau could address this risk through the adoption of an anti-evasion provision specifically aimed at preventing financial institutions from morphing their products to avoid coverage under this rule.

With respect to the clarification in proposed comment 2(b)(3)(i)–5 that the prepaid account definition only covered accounts that were capable of holding funds (rather than just acting as a pass-through), several commenters, including issuing banks, a payment network, a digital wallet provider, and a consumer group, agreed with the proposed approach. These commenters asserted that, to the extent a digital wallet was simply acting as a pass-through of credentials for accounts that were already protected under Regulation E (or other regulations), consumers using those digital wallets were already receiving sufficient protections. As stated in the section-by-section analysis of § 1005.2(b)(3) above, other commenters objected to the Bureau's decision to cover digital wallets under the rule in any respect.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the general content of proposed § 1005.2(b)(3)(i)(A), renumbered as § 1005.2(b)(3)(i)(D)(*1*), with minor edits to streamline the language. Specifically, final § 1005.2(b)(3)(i)(D)(*1*) defines a prepaid account, in part, as an account that is issued on a prepaid basis in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter. In addition, the Bureau is finalizing proposed comments 2(b)(3)(i)–3, –4, –5, and –6, renumbered as comments 2(b)(3)(i)–4, –5, –6, and –7, largely as proposed, with some minor revisions for clarity.

The Bureau continues to believe 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. The Bureau notes that 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 funds. 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,[303] consumers may use these products as transaction account substitutes for a substantial period of time even when consumers cannot reload the cards themselves, and thus such products should be similarly protected. In addition, while it is true that non-reloadable products are distinct from transaction accounts (to the extent that the funds will eventually be spent down in their entirety and the account abandoned), while the accounts are in use, they may be used to conduct a significant portion of a consumer's transactions or hold a substantial portion of a consumer's funds, and as such the Bureau believes that they warrant the protections of Regulation E, including error resolution in particular. Furthermore, the Bureau believes that extending protections to all broadly usable prepaid accounts is necessary to avoid consumer confusion as to what protections apply to similar accounts. Finally, the Bureau remains concerned that, if it were to exclude non-reloadable cards from the definition of prepaid account, a financial institution could evade the Bureau's rulemaking on prepaid accounts by issuing non-reloadable cards repeatedly to the same consumer, such as to provide repeated disbursements (*e.g.,* providing a new student loan disbursement card each semester). The Bureau does not believe

[303] *See* 71 FR 51437, 51441 (Aug. 30, 2006).

that an anti-evasion provision is the optimal method for dealing with this concern; rather, the Bureau is concerned that, at this time, such a provision would in fact cause some uncertainty without addressing all other concerns.

The Bureau also is not persuaded by commenters' objections to the Bureau's proposal to cover digital wallets that can hold funds under the definition of prepaid account. The Bureau continues to believe that digital wallets that can hold funds operate in large part in a similar manner to physical or online prepaid accounts—a consumer can load funds into the account, spend the funds at multiple, unaffiliated merchants (or conduct P2P transfers), and reload the account once the funds are depleted. Accordingly, the Bureau believes that consumers who transact using digital wallets deserve the same protections as consumers who use other prepaid accounts. Indeed, as with other prepaid accounts, a consumer's digital wallet could fall victim to erroneous or fraudulent transactions. In addition, while the Bureau understands that most digital wallets available today do not typically charge many fees (with few exceptions, such as, for example, foreign exchange fees in certain circumstances or a fee for having funds from the account issued to the consumer in the form of a check), it is impossible to rule out that existing or new digital wallet providers will charge such fees in the future. If fees do become standard in this space, consumers ought to know what those fees are and when they will be imposed.

2(b)(3)(i)(D)(2)

The Bureau's Proposal

The next part of the Bureau's proposed definition of prepaid account would have addressed 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.[304] While store gift cards and gift certificates can be used at only a single merchant or an affiliated group of merchants,[305] a general-use prepaid card is defined in part under the Gift Card Rule as redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at ATMs.[306] The Bureau proposed to add § 1005.2(b)(3)(i)(B), which would have stated that to qualify as a prepaid account, the card, code or other device had to be redeemable upon presentation at multiple, unaffiliated merchants for goods or services, usable at ATMs, or usable for P2P transfers. Proposed comment 2(b)(3)(i)–7 would have referred 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.[307]

The Bureau believed it was appropriate to limit the definition of prepaid account to those products that consumers could use at multiple, unaffiliated merchants for goods or services, at ATMs, or for P2P transfers. The Bureau noted in the proposal that 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 the Bureau's rulemaking on prepaid accounts is to provide comparable coverage for products with comparable functionality—in this case traditional debit cards and prepaid cards—the Bureau believed it was appropriate to structure the proposed definition in a way that products with similar features had the protections afforded by Regulation E. Pursuant to the proposed definition, therefore, a prepaid account would have been an account that was 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.

Next, the Bureau recognized that prepaid products were also growing in popularity as a vehicle for consumers to transmit payments to each other or to businesses. The Bureau noted that an increasing number of products allowed 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. The Bureau proposed to add new comment 2(b)(3)(i)–8 to further explain when accounts capable of P2P transfers were prepaid accounts. Specifically, the comment would have explained that a prepaid account capable of P2P transfers was an account that allowed a consumer to send funds to another consumer or business. As the comment made clear, an account could qualify as a prepaid account if it permitted P2P transfers even if it was 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 have been a P2P transfer if it could have only been used to make payments to the merchant or affiliated group of merchants on whose behalf the card was issued.

Comments Received

The only specific aspect of proposed § 1005.2(b)(3)(i)(B) on which the Bureau received comment concerned its decision to include products that could only be used to facilitate P2P transfers. A number of consumer groups and a trade association voiced support for the Bureau's decision to include such products in the proposal. Other industry commenters who commented on the issue either opposed coverage of products usable for P2P transfers or requested that the Bureau adopt specific carve-outs from this prong of the definition. A digital wallet provider urged the Bureau to exclude P2P products from the definition of prepaid account, arguing that P2P functionality is more similar to a closed-loop payment system than to open-loop GPR cards. Two industry trade associations and a law firm writing on behalf of a coalition of prepaid issuers argued that regulation of products used solely to facilitate P2P transfers would be premature, and could limit future development of innovative products, to the detriment of consumers. An issuing bank, a program manager, and a commenter representing non-bank money transfer providers noted that products used to facilitate P2P transfers could be interpreted to include products or services offered by State-licensed money transmitters, which they said are already covered under existing regulations. They argued that to avoid duplicative and potentially inconsistent regulation, the Bureau should specifically exclude any product or service that is subject to State or Federal money transmitter laws.

As described above, the Bureau also received a number of more general comments urging greater clarity to distinguish what existing products are subject to general Regulation E from those subject to the Bureau's final rule governing prepaid accounts.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.2(b)(3)(i)(B) largely as proposed, but with refinements to limit the scope to accounts whose primary function is among those specifically listed. To

[304] *See* 75 FR 16580, 16588 (Apr. 1, 2010).

[305] *See* § 1005.20(a)(1)(ii) and (2)(ii).

[306] § 1005.20(a)(3)(ii).

[307] The Gift Card Rule provides 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.

accomplish this change, the Bureau has removed the phrase ''is redeemable upon presentation at'' and replaced it with ''whose primary function is,'' to clarify that, in order to qualify as a prepaid account under this portion of the definition, an account must be more than merely capable of being used in the ways specified. Finally, as part of its overall reordering of § 1005.2(b)(3), the Bureau has renumbered proposed § 1005.2(b)(3)(i)(B) as final § 1005.2(b)(3)(i)(D)(*2*). Specifically, final § 1005.2(b)(3)(i)(D)(*2*) defines a prepaid account, in part, as an account whose primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct P2P transfers.

The Bureau has considered the comments regarding the appropriateness of extending the definition of prepaid account to products that can only be used for P2P transfers, and has decided to finalize its decision to include such products in the definition of prepaid account. The Bureau continues to believe that the structure and usage of P2P products warrants their inclusion in the final rule. Unlike many limited-use prepaid products that have acceptance limited to a restricted location (such as at merchants located on a college campus or in a mall), P2P products do not have such a limitation. Indeed, as the Bureau noted in the proposal, insofar as a P2P product could 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 could use these products to pay anyone with funds stored in the account, the Bureau continues to believe that they should be included in the definition of prepaid account. Accordingly, the Bureau declines to exclude such products from coverage under the final rule. The Bureau is therefore finalizing the reference to P2P transfers in § 1005.2(b)(3)(i)(D)(*2*), and finalizing proposed comment 2(b)(3)(i)–8, renumbered as comment 2(b)(3)(i)–10, largely as proposed.

The Bureau has also revised proposed § 1005.2(b)(3)(i)(B), renumbered as § 1005.2(b)(3)(i)(D)(*2*), to more clearly delineate the distinction between accounts that are covered by existing Regulation E and accounts that are covered under the new definition of prepaid account. Specifically, the Bureau has refocused the definition to apply only to accounts ''whose primary function is to conduct'' transactions with multiple, unaffiliated merchants or at ATMs, or P2P transfers. (In addition, as discussed below, the Bureau is adding a new prong, § 1005.2(b)(3)(i)(D)(3), to explicitly exclude checking accounts, share draft accounts, and NOW accounts from the residual definition of prepaid accounts.) The Bureau is aware that many types of accounts, including accounts already covered by Regulation E, may be capable of being used for the above functions. The Bureau is therefore concerned that the language used in proposed § 1005.2(b)(3)(i)(B) could be over-inclusive, contributing to the uncertainty raised by some commenters regarding which accounts are covered under which provisions of Regulation E.

The Bureau intends its change here to narrow the definition of prepaid account to focus on products whose primary function for consumers is to provide general capability to use loaded funds to conduct transactions with merchants, or at ATMs, or to conduct P2P transfers, while excluding products that only provide such capability incidental to a different primary function. For example, the primary function of a traditional brokerage account is to hold funds so that the consumer can conduct transactions through a licensed broker or firm, not to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct P2P transfers. Similarly, the primary function of a savings account is to accrue interest on funds held in the account; such accounts restrict the extent to which the consumer can conduct general transactions and withdrawals.[308]

To provide greater clarity about this intended interpretation, the Bureau is making minor wording revisions to § 1005.2(b)(3)(i)(D)(*2*) and related commentary to accommodate the ''primary function'' approach, and is adding a comment with several illustrative examples of when an account satisfies the ''primary function'' prong of final § 1005.2(b)(3)(i)(D). New comment 2(b)(3)(i)–8 clarifies that, to qualify as a prepaid account, an account's primary function must be to provide consumers with general transaction capabilities, including by enabling consumers to use loaded funds to conduct the transactions enumerated in § 1005.2(b)(3)(i)(D)(*2*), and that accounts that provide such capabilities only incidentally are excluded from the definition, and as such are not prepaid accounts as defined by final § 1005.2(b)(3). The comment provides examples of accounts that provide the enumerated transactional capabilities only incidentally—specifically, brokerage accounts and savings accounts, where a consumer deposits money, for example, with a financial institution for the primary purpose of conducting transactions with the institution (*e.g.,* to conduct trades in a brokerage account) rather than with third parties. The comment then provides several examples for additional guidance. New comment 2(b)(3)(i)–8.i clarifies that an account's primary function is to enable a consumer to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct P2P transfers, even if it also enables a third party to disburse funds to a consumer. For example, a prepaid account that conveys tax refunds or insurance proceeds to a consumer meets the primary function test if the account can be used, *e.g.,* to purchase goods or services at multiple, unaffiliated merchants.

Next, new comment 2(b)(3)(i)–8.ii clarifies that whether an account satisfies final § 1005.2(b)(3)(i)(D) is determined by reference to the account, not the access device associated with the account. An account satisfies final § 1005.2(b)(3)(i)(D) even if the account's access device can be used for other purposes, *e.g.,* as a form of identification. Such accounts may include, for example, a prepaid account used to disburse student loan proceeds via a card device that can be used at unaffiliated merchants or to withdraw cash from an ATM, even if that access device also acts as a student identification card.

New comment 2(b)(3)(i)–8.iii clarifies that, where multiple accounts are associated with the same access device, the primary function of each account is determined separately. The comment goes on to clarify that one or more accounts can satisfy final § 1005.2(b)(3)(i)(D) even if other accounts associated with the same access device do not. This commentary is intended to address situations where two or more separate ''wallets'' or ''purses'' are associated with the same access device. It provides the specific example of a student identification card, which may act as an access device associated with two separate accounts: An account used to conduct transactions with multiple, unaffiliated merchants for goods or services, and an account used to conduct closed-loop

[308] *See, e.g.,* the Board's Regulation D, 12 CFR 204.2(d) (defining a savings deposit as a deposit or account with respect to which the depositor may be required by the depository institution to give written notice of an intended withdrawal or a deposit or account from which the depositor is permitted or authorized to make no more than six transfers and withdrawals, or a combination of such transfers and withdrawals, per calendar month or statement cycle).

transactions on campus. The comment clarifies that the account used to conduct transactions with multiple, unaffiliated merchants for goods or services satisfies final § 1005.2(b)(3)(i)(D), even though the account used to conduct closed-loop transactions does not.

Next, new comment 2(b)(3)(i)–8.iv clarifies that an account satisfies final § 1005.2(b)(3)(i)(D) if its primary function is to provide general transaction capability, even if an individual consumer does not in fact use it to conduct multiple transactions. For example, the fact that a consumer may choose to withdraw the entire account balance at an ATM or transfer it to another account held by the consumer does not change the fact that the account's primary function is to provide general transaction capability. The Bureau is including this comment to clarify that an account's primary function is not determined by how frequently an individual consumer chooses to use the account for a given function. This clarification aligns with the Bureau's decision, discussed in the section-by-section analysis of § 1005.2(b)(3) above, to cover under the final rule as prepaid accounts those products that do not necessarily act as transaction account substitutes. For example, the Bureau understands that some consumers who receive funds from third parties—such as tax refunds or insurance proceeds—via prepaid accounts may not always transact with the accounts on an ongoing basis, opting instead to withdraw the funds from the account in their entirety after acquisition or transfer them to another account. Pursuant to new comment 2(b)(3)(i)–8.iv, these consumer's accounts would still meet the ''primary function'' prong set forth in final § 1005.2(b)(3)(i)(D)(*2*).

Finally, new comment 2(b)(3)(i)–8.v states the corollary of the general rule set forth in § 1005.2(b)(3)(i)(D)(*2*). Specifically, it explains that an account whose primary function is other than to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct P2P transfers, does not satisfy final § 1005.2(b)(3)(i)(D). The comment goes on to provide the example of an account whose only function is to make a one-time transfer of funds into a separate prepaid account as an account that would not qualify as a prepaid account under this prong of the definition. Such accounts could include, for example, so-called reload packs, which several industry commenters urged the Bureau to exclude from coverage under the final rule. In contrast to non-reloadable prepaid cards, which can be used to make purchases or other transactions, reload packs can only be used to transfer funds into prepaid accounts.

The Bureau is also adopting proposed comment 2(b)(3)(i)–7, renumbered as comment 2(b)(3)(i)–9, which cross-references comments 20(a)(3)–1 and –2 for guidance on the meaning of the term redeemable upon presentation at multiple, unaffiliated merchants.

2(b)(3)(i)(D)(3)

As discussed in greater detail in the section-by-section analyses of § 1005.2(b)(3) and (3)(i)(C) above, the Bureau received several comments requesting that it revise the proposed definition of prepaid account to provide a clearer line between accounts that were already covered by the existing definition of account in § 1005.2(b) and accounts that would be covered by the newly created prepaid account definition. A number of commenters, including a payment network and an industry trade association, noted a specific lack of clarity with respect to products that could arguably qualify as both. To illustrate, they noted that some prepaid accounts offer preauthorized check-writing capability, while some checking accounts allow consumers to transact using the ACH routing number or online passcode. These commenters asked the Bureau to resolve this ambiguity.

As set forth in the section-by-section analyses of § 1005.2(b)(3)(i)(C) and (D)(*2*) above, the Bureau is finalizing several changes to the proposed definition of prepaid account to provide a clearer delineation between accounts that are covered by Regulation E generally and accounts that will be covered as prepaid accounts. In addition to those changes, the Bureau is also adding a third prong to § 1005.2(b)(3)(i)(D). Pursuant to final § 1005.2(b)(3)(i)(D)(*3*), only accounts that are not otherwise a checking account, a share draft account, or a NOW account will qualify as a prepaid account. For purposes of this element, the Bureau does not consider the capability to issue preauthorized checks to qualify an account as checking, share draft, or NOW accounts. The Bureau notes that it intended to exclude checking and other demand deposit accounts from the proposed definition of prepaid account by including the phrase ''not otherwise an account under paragraph (b)(1) of this section.'' The Bureau acknowledges, however, that its proposed approach did not sufficiently resolve the potential ambiguity referenced by commenters. The Bureau believes that its express reference in final § 1005.2(b)(3)(i)(D)(*3*) to the account not being a checking, share draft, or NOW account, together with the primary function test in final § 1005.2(b)(3)(i)(D)(*2*), more directly address these concerns.

2(b)(3)(ii)

The next portion of the final definition of prepaid account includes several express exclusions from that definition. In addition to the exclusions included in the proposed rule, the Bureau is adding exclusions for (1) accounts loaded only with funds from a dependent care assistance program or a transit or parking reimbursement arrangement; (2) accounts that are directly or indirectly established through a third party and loaded only with qualified disaster relief payments; and (3) the P2P functionality of accounts established by or through the U.S. government whose primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities. The Bureau notes that, to the extent certain accounts were already covered as accounts under existing Regulation E generally, these exclusions do not change that, and only exclude from the definition of prepaid account.

2(b)(3)(ii)(A)

Proposed § 1005.2(b)(3)(iv) would have addressed prepaid products established in connection with certain health care and employee benefit programs. Specifically, the proposed provision would have stated that the term prepaid account did not include a health savings account, flexible spending account, medical savings account, or a health reimbursement arrangement. Proposed comment 2(b)(3)(iv)–1 would have defined these terms by referencing existing provisions in the Internal Revenue Code. Specifically, the Bureau proposed to define ''health savings account'' as a health savings account as defined in 26 U.S.C. 223(d); ''flexible spending account'' as a cafeteria plan which provides health benefits or a health flexible spending arrangement pursuant to 26 U.S.C. 125; ''medical savings account'' as an Archer MSA as defined in 26 U.S.C. 220(d); and ''health reimbursement arrangement'' as 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 believed that, while these health care and employee benefit accounts could, in some ways, be similar to other types of prepaid

accounts, coverage under Regulation E was not necessary at this time. Specifically, the Bureau noted that these products typically come with limits on the amount of funds that could be loaded on to them, the methods for loading, and numerous restrictions on where, when, and how those funds could be spent.

The Bureau received several comments in response to this aspect of the proposal. Several consumer groups opposed the exclusion, noting that the accounts at issue can hold large amounts of money that consumers use over long periods of time. These commenters noted further that these types of accounts especially warrant error resolution protections since—according to the commenters—healthcare billing is notoriously error-prone. In addition, these commenters asserted that compliance should not be overly burdensome for issuers of these types of accounts, since many of the underlying benefit programs already provide consumers with error resolution protections.

By contrast, industry commenters, including issuing banks and credit unions, trade associations representing both financial institutions and employers, a payment network, and a program manager, expressed support for the proposed exclusions, and urged the Bureau to expand them further to include additional categories of similar employer-sponsored compensation programs. Specifically, several commenters urged the Bureau to add exclusions for accounts used to disburse parking, transit, dependent care, and wellness benefits. They argued that these programs are similar in several key respects to the types of programs the Bureau excluded from the definition of prepaid account in the proposal. For example, they explained that these accounts are typically funded from the employer's general assets, not by consumers, and as such they belong to the employer rather than the consumer. They argued further that these accounts do not warrant coverage under the rule because they are not consumer asset accounts in the sense that their use is highly restricted and, for certain types of programs, the funds held in them are notional, rather than actual, in nature. A subset of these commenters also urged the Bureau to reconsider referring to specific sections of the Internal Revenue Code when specifying the types of programs that would qualify for the exclusion, noting that the Code's numbering may change in the future.

For the reasons set forth herein, the Bureau is finalizing exclusions for health savings accounts, flexible spending arrangements, medical savings accounts, and health reimbursement arrangements in proposed § 1005.2(b)(3)(iv), renumbered as § 1005.2(b)(3)(ii)(A). The Bureau is likewise finalizing proposed comment 2(b)(3)(iv)–1, renumbered as 2(b)(3)(ii)–1. The Bureau is persuaded that accounts used to disburse funds related to these programs are fundamentally different from other prepaid accounts covered by the final rule. As stated in the proposal, these products are governed by the terms of their plans and related regulations, such that, for example, health savings accounts and medical savings accounts can typically only be used to pay for qualified medical expenses. The Bureau believes that the limited use of funds under such arrangements distinguish them from consumer transaction accounts. As such, the Bureau believes such accounts are appropriately excluded from the rule. The Bureau believes that the term account is reasonably interpreted not to include these types of products or, in the alternative, to further the purposes of EFTA; the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to finalize an express exclusion in final § 1005.2(b)(3)(ii)(A).

The Bureau has also considered the comments requesting that additional categories of employer-sponsored compensation be added to the exclusion in § 1005.2(b)(3)(ii)(A). The Bureau agrees that, to the extent other programs exist that are significantly similar to health savings accounts, flexible spending arrangements, medical savings accounts, and health reimbursement arrangements, those programs should also be excluded from the rule for the same reasons. Accordingly, the Bureau is expanding the exclusion to encompass accounts associated with other employer-sponsored benefit arrangements, namely, accounts used to disburse funds from a dependent care assistance program or a transit or parking reimbursement arrangement. The Bureau is adding a reference to these additional program types in final § 1005.2(b)(3)(ii)(A) and the Internal Revenue Code sections that reference them in final comment 2(b)(3)(ii)–1. The Bureau is finalizing that comment with references to the relevant Internal Revenue Code sections because it believes that specificity will help ensure that the exclusions remain limited in scope, and because it believes that the clarity provided by such specificity outweighs the potential difficulty that may occur in the event the numbering scheme of the Internal Revenue Code changes.

The Bureau is otherwise finalizing § 1005.2(b)(3)(ii)(A) and comment 2(b)(3)(ii)–1 as proposed. The Bureau notes, in response to commenters that requested that it add an exclusion for employee wellness programs, that such programs are likely excluded from the rule under the exclusion for loyalty, award, or promotional gift cards. That exclusion applies to loyalty, award, or promotional gift cards, as defined in § 1005.20(a)(4) and (b). Existing comment 20(a)(4)–1.vi lists incentive programs through which an employer provides cards to employees to encourage employee wellness as a type of loyalty, award, or promotional gift card.

2(b)(3)(ii)(B)

Several commenters, including a payment network, an issuing bank, several industry trade associations, and a national relief organization, urged the Bureau to add a separate exclusion for accounts used to distribute disaster relief funds. Most notably, the national relief organization noted that the accounts used to distribute the funds, as well as the funds themselves, are the property of the relief organization, not the consumer, which makes these accounts distinct from other consumer asset accounts the Bureau proposed to cover. Commenters argued that such accounts are different because consumers who receive these accounts cannot shop for them, and tend to use them for a short period of time without reloading—in most cases, the trade association commenter noted, the cards will expire if not used within 60 days. The payment network argued that the proposed pre-acquisition disclosure requirements would delay consumers' receipt of relief funds in the wake of tragic events. In addition, commenters noted that these accounts rarely feature any of the fees that would be required to be disclosed on the proposed short form. Accordingly, these commenters asserted, covering these accounts under the Bureau's final rule on prepaid accounts would increase the cost of providing them to consumers in need for the sake of disclosures that are neither necessary nor useful to those consumers. The national relief organization, which uses prepaid cards to disburse disaster relief funds in some circumstances, noted further that the proposed disclosure requirements in conjunction with the packaging replacement requirements in proposed § 1005.18(h) would render much of its prepaid card inventory useless. A consumer group commenter, by

contrast, argued that disaster relief cards should not be excluded so long as they are used in the same way as other prepaid accounts—*i.e.,* as open-loop accounts used to make purchases at multiple, unaffiliated merchants.

The Bureau agrees that the nature of these accounts—such as, for example, the fact that the underlying funds are owned by the relief organization, rather than the consumer—warrant their exclusion from the rule. The Bureau believes that such an exclusion is further warranted because, on balance, the burden of requiring these accounts to comply with the requirements of this final rule outweighs the potential utility of those requirements to consumers who have had the misfortune of experiencing a disastrous event. The Bureau does not believe it would be appropriate at this time to place such additional burdens on providers. Accordingly, 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 finalize an express exclusion in new § 1005.2(b)(3)(ii)(B) for accounts that are established directly or indirectly by a third party and loaded only with qualified disaster relief payments. This express exclusion will protect consumers by ensuring that they have quick access to crucial funds provided by disaster relief organizations in the wake of tragic events. The Bureau is also adding new comment 2(b)(3)(ii)–2 to clarify that the exclusion is limited to funds made available through a qualified disaster relief program, as that term is defined in the Internal Revenue Code.[309]

2(b)(3)(ii)(C)

The Bureau received a request through the interagency consultation process to expressly exempt from the prepaid account definition certain accounts, currently marketed under the brand names Eagle Cash and Navy Cash/Marine Cash, that are primarily used by members of the armed forces to conduct closed-loop transactions on military property. According to the request, these accounts allow servicemembers to conduct closed-loop transactions in forward-deployed environments, such as an army base or a naval vessel, where cash is inconvenient and other commercially available payments technologies are unavailable. These accounts sometimes offer a P2P feature that allows users to transfer loaded funds to other accountholders from the closed-loop ''purse'' of the account, but such functionality, the Bureau understands, is incidental to the primary closed-loop function of the account.

The Bureau agrees that accounts whose primary function is to facilitate closed-loop transactions by members of the armed forces in forward-deployed environments are sufficiently distinguishable and unique to warrant a narrow, express exclusion from the final rule. Accordingly, 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 finalize an express exclusion in new § 1005.2(b)(3)(ii)(C) for the P2P transfer functionality of an account established or through the United States government whose primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities. This express exclusion will protect servicemember consumers by ensuring that they have access to a convenient and well-established payment method at a time when alternate payment methods such as cash or bank accounts may not be available for operational reasons. The Bureau notes that this is a narrow exclusion intended to accommodate a specific set of closed-loop products that are used in unique circumstances, such as on military vessels or bases, or similar government facilities (*e.g.,* embassies or consulates) in remote locations. The Bureau notes further that, to the extent that such accounts offer an open-loop capability that allows the consumer to conduct transactions at multiple, unaffiliated merchants for goods or services, that functionality would not be covered by this exclusion.

2(b)(3)(ii)(D)

The Bureau's Proposal

Regulation E's gift card provisions cover some prepaid products that also could fall within the proposed definition of prepaid account. In particular, § 1005.20 contains provisions applicable to gift certificates, store gift cards, and general-use prepaid cards.[310] 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 in § 1005.20(b)(2) 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. The Bureau proposed to add § 1005.2(b)(3)(i)(C), which would have provided that a prepaid account was 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 believed that having to apply both the existing gift card regulatory requirements and the proposed prepaid account requirements could adversely impact the gift card market. The Bureau further expressed concern that if the requirements of the proposed rule were applied to gift cards, it was possible that those requirements, in the context of the typical gift card, could confuse consumers. Relatedly, the Bureau noted that, because most gift cards are not reloadable, not usable at ATMs, and not open loop, consumers were less likely to use gift cards as transaction account substitutes. Finally, the Bureau was concerned that, were it to impose provisions for access to account information and error resolution, and create limits on consumers' liability for unauthorized EFTs, the cost structure of gift cards could change dramatically, since, unlike other types of prepaid products, many gift cards do not typically offer these protections. The Bureau noted in the proposal that the exemption in the Gift Card Rule for general-use prepaid cards applies to products that are reloadable

[309] *See* 26 U.S.C. 139(b) (defining ''qualified disaster relief payment'' as, generally, any amount paid to or for the benefit of an individual to reimburse or pay reasonable and necessary expenses incurred as a result of, or for the repair or rehabilitation of property necessitated by, a qualified disaster).

[310] 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).

and not marketed *or* labeled as gift cards or gift certificates.[311]

By contrast, the Bureau proposed to exclude from the definition of prepaid account only such general-use prepaid products that were *both* marketed and labeled as gift cards or gift certificates. The Bureau was concerned that, absent this approach, some products it intended to cover in the proposal may be inadvertently excluded due to occasional or incidental marketing activities. For example, comment 20(b)(2)–2 describes, in part, a network-branded GPR 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 have been considered to be both marketed and labeled as a gift card or gift certificate and thus would have been covered by the proposed definition of prepaid account. Proposed comment 2(b)(3)(i)–9 would have explained this distinction.

Comments Received

A number of issuing banks, a digital wallet provider, and an industry trade association submitted comments in support of the proposed exclusion for gift cards. Two trade association commenters urged the Bureau to expand the exclusion to also cover rebate or refund cards used by retailers or other businesses as part of their merchandise return or reimbursement programs. In addition, a program manager and a payment network objected to the Bureau's decision to exclude only those GPR products that were both marketed and labeled as gift cards. These commenters urged the Bureau to exclude any prepaid product that was subject to the Gift Card Rule, regardless of how it was marketed or labeled. They argued that any card subject to the Gift Card Rule was likely to be limited in function and therefore did not warrant coverage by a rule aimed at protecting transaction account substitutes. In the same vein, they argued that the burden of complying with the proposal would far outweigh the benefit to consumers for these products, and could effectively remove these products from the marketplace. In addition, the payment network noted that the fact that some prepaid products could be subject to both the proposal and the Gift Card Rule could confuse consumers and create regulatory ambiguity for industry.

Two consumer group commenters, by contrast, opposed this proposed exclusion. One group urged the Bureau to cover network-branded, open-loop reloadable gift cards loaded with at least $500, while the other urged the Bureau to cover reloadable gift cards with a balance of at least $250, each arguing that a card that is loaded with more than those amounts poses a higher consumer risk associated with unauthorized transactions.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing proposed § 1005.2(b)(3)(i)(C) and proposed comment 2(b)(3)(i)–9, renumbered as § 1005.2(b)(3)(ii)(D) and comment 2(b)(3)(ii)–3, respectively, with technical revisions to conform internal references to reordering elsewhere in the final rule. Gift certificates and gift cards do not meet the Bureau's definition of prepaid accounts, as they typically cannot be used with multiple, unaffiliated merchants. With regard to general-use prepaid cards that are both marketed and labeled as a gift card or gift certificate, the Bureau believes it is necessary and proper to finalize this exclusion pursuant to its authority under EFTA section 904(c) to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers.

After consideration of the comments, the Bureau remains convinced that subjecting this general category of products to both the Gift Card Rule and the requirements of this final rule would place a significant burden on industry without a corresponding consumer benefit. On the other hand, the Bureau continues to believe that the gift card exclusion should not extend to products that consumers may use as or confuse with transaction account substitutes, even if such products are also covered by the Gift Card Rule. To illustrate, the Bureau understands that some consumers may use multiple non-reloadable cards as transaction accounts to pay important household expenses like utilities and groceries, spending them down and discarding them when the funds are depleted. These cards may be subject to the Gift Card Rule because they are not reloadable and thus do not qualify for the GPR card exclusion in § 1005.20(b)(2). However, if these cards are not labeled or marketed as gift cards, it is possible that consumers will unwittingly acquire these cards thinking that they carry the same protections as other prepaid accounts under this final rule. As previously stated, the Bureau believes consumers who use non-reloadable prepaid products in this way deserve the same protections as consumers who use GPR cards. Further, the Bureau believes that consumers generally understand the protections associated with, and limitations of, gift cards to the extent they are labeled as such. Accordingly, the Bureau declines to expand the proposed exclusion for accounts that are *both* marketed and labeled as gift cards to accounts that are labeled *or* marketed as gift cards, as some industry commenters suggested. The Bureau notes that in the gift card provisions of the Credit CARD Act, Congress expressly granted to the Board (now to the Bureau) authority to determine the extent to which the individual definitions and provisions of EFTA or Regulation E should apply to general-use prepaid cards, gift certificates, and store gift cards.[312]

The Bureau has considered the comments asserting that coverage under both the Prepaid and Gift Card Rules will cause consumer confusion and regulatory ambiguity. However, the Bureau understands that, currently, prepaid issuers consciously avoid marketing and labeling their products in such a way as would cause such products to be covered under the Gift Card Rule. As such, the Bureau believes that, in practice, very few products that are subject to the Gift Card Rule will also qualify as prepaid accounts under this final rule.

Finally, the Bureau declines to expressly expand the exclusion for accounts that are both marketed and labeled as gift cards to rebate cards, as two commenters suggested. The Bureau believes such an express exclusion would be unnecessary, since such programs are generally excluded from the rule under the exclusion for loyalty, award, or promotional gift cards, as defined in § 1005.20(a)(4) and (b). Existing comment 20(a)(4)–1.iii lists rebate programs operated or administered by a merchant or product manufacturer that can be redeemed for goods or services.

2(b)(3)(ii)(E)

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. Existing § 1005.15(a)(2)

[311] *See* § 1005.20(b)(2).

[312] Public Law 111–24, 123 Stat. 1734, 1754 (2009); EFTA section 915(d)(1)(B); 15 U.S.C. 1693l–1(d)(1)(B).

defines a government benefit ''account'' to exclude accounts for distributing needs-tested benefits in a program established under State or local law or administered by a State or local agency. The Bureau proposed to have § 1005.2(b)(3)(iii) state that the term prepaid account included a government benefit account, as defined in existing § 1005.15(a)(2), but did not repeat the exclusion in § 1005.15(a)(2) for State and local needs-tested benefit programs as part of the definition of prepaid account in proposed § 1005.2(b)(3). To make clear that accounts excluded from the definition of government benefit account in § 1005.15(a)(2) are also excluded from the general definition of prepaid account in § 1005.2(b)(3), and pursuant to its authority under EFTA section 904(d) to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, the Bureau is finalizing new § 1005.2(b)(3)(ii)(E) to explicitly exclude accounts established for distributing needs-tested benefits in a program established under State or local law or administered by a State or local agency, as set forth in § 1005.15(a)(2).

Virtual Currency

As noted in part II.D above, the Bureau received a number of comments on whether the Bureau should regulate virtual currency products and services under this final rule. Commenters included banks, a digital wallet provider, a virtual currency exchange, industry trade associations, consumer advocacy groups, a law firm representing a coalition of prepaid issuers, and a non-governmental virtual currency policy organization.

Industry commenters had mixed reactions to whether the Bureau should regulate virtual currency products and services. Two trade association commenters representing banks stated that the proposed definition of ''prepaid account'' should be modified to expressly include accounts funded or capable of being funded with virtual currencies and submitted a definition of virtual currency they urged the Bureau to adopt. They asserted that virtual currencies are ''funds'' under EFTA, and coverage is needed to ensure consumers get the kind of protections they would have if they used other comparable but closely regulated traditional payment systems and products. They further asserted that virtual currency products and systems pose greater risks to consumers than traditional payment products and systems funded with fiat currency.

These trade association commenters further asserted their belief that, with few exceptions, regulating prepaid accounts funded in virtual currencies would be consistent with the Bureau's goal of providing comprehensive consumer protections for prepaid products. With respect to the exceptions, the commenters suggested that it was unnecessary to regulate virtual currencies that can only be used (1) at a specific merchant or defined group of affiliated merchants; (2) within online gaming platforms with no market or application outside of those platforms; or (3) as part of a customer affinity or rewards program. They asserted that their suggested carve outs are similar to the proposed exclusions for certain store gift cards and for loyalty, award, or promotional gift cards, in the proposed definition of prepaid account.

On the other hand, a diverse group of industry commenters and a non-governmental virtual currency policy organization commenter urged the Bureau to expressly provide in the final rule that it does not apply to virtual currency products and services. Commenters expressed concern that regulation would be premature, thus potentially stifling innovation. Several commenters highlighted the low rate of consumer adoption of virtual currency products and services. Commenters also asserted that the Bureau has not adequately studied the virtual currency industry, and that regulations developed for GPR cards are unsuitable to apply to virtual currency products and services because of the differences between such products and services and GPR cards.

A law firm commenting on behalf of a coalition of prepaid issuers and a virtual currency trade association commented that they supported the Bureau's desire to ensure consumer protection rules are applied consistently across different industries that share similar functionalities. However, neither commenter supported regulating virtual currency products and services in the context of the prepaid rulemaking. The law firm commenter asserted that it was premature to regulate virtual currency products and services, and that adopting regulations to apply to virtual currency products and services would impose significant regulatory burden on such products and services and also stifle innovation. It further suggested that the Bureau adopt the approach the Board took with respect to the regulation of prepaid cards generally. It asserted that despite the Board's decision to not extend the coverage of its Payroll Card Rule to GPR cards, issuers of GPR cards have nonetheless applied consumer protection comparable to those established in that rule. The trade association commenter asserted that the Bureau should address virtual currencies in a separate rulemaking.

Consumer group commenters generally urged the Bureau to regulate those virtual currency products and services that are used by or marketed to consumers. Specifically, two consumer group commenters stated that the Bureau was right to develop rules that, they believed, anticipated the increasing role of virtual currencies. One urged the Bureau to extend the definition of account to include virtual currency wallets, stating that such extension would be appropriate because it is important for consumer protection rules to be in place before consumer adoption of such wallets becomes widespread, and the application of Regulation E to virtual currency wallets could incent virtual currency wallet providers to ensure that the funds consumers put into virtual currency wallets are adequately protected (to the extent they are not already doing so). Another consumer group commenter asserted that as long as virtual currencies are used for consumer purposes, consumers need protection. It observed that current virtual currency systems lack such protections and highlighted the lack of protection in the areas of limited liability, dispute rights, and error resolution. However, one consumer group commenter opposed regulating virtual currency products and services as prepaid accounts. The commenter stated that it did not believe that accounts that convert fiat money into stored value in a form that is not fiat currency should be classified as prepaid accounts, because the funds in those accounts would be protected once they are converted back into fiat currency.

As discussed above, the Bureau stated in the proposal that the Bureau's analysis is ongoing with respect to virtual currencies and related products and services. The proposed rule did not resolve specific issues with respect to the application of either existing regulations or the proposed rule to virtual currencies and related products and services. Accordingly, although the Bureau received some comments addressing virtual currency products and services, the Bureau reiterates that application of Regulation E and this final rule to such products and services is outside of the scope of this rulemaking. However, the Bureau notes that as part of its broader administration and enforcement of the enumerated consumer financial protection statutes and title X of the Dodd-Frank Act, the Bureau continues to analyze the nature

of products or services tied to virtual currencies.

Section 1005.4 General Disclosure Requirements; Jointly Offered Services

4(a)(1) Form of Disclosures

Existing § 1005.4(a)(1) sets forth general requirements for disclosures required by Regulation E. Among other things, it provides that the disclosures must be clear and readily understandable. Existing comment 4(a)–1 explains that there are no particular rules governing type size, number of pages, or the relative conspicuousness of various terms in the disclosures. As discussed in greater detail below, the short form and long form disclosures under final § 1005.18(b) are subject to the specific formatting requirements, including prominence and size requirements, that are set forth in final § 1005.18(b)(7). Similarly, remittance transfers subject to subpart B of Regulation E are also subject to specific formatting requirements set forth in existing § 1005.31(c). Accordingly, the Bureau is adopting a conforming change to comment 4(a)–1 to clarify that §§ 1005.18(b)(7) and 1005.31(c) are exceptions to this general principle explained in comment 4(a)–1.

Section 1005.10 Preauthorized Transfers

10(e) Compulsory Use

10(e)(1) Credit

In the discussion below of the Bureau's final changes to Regulation Z, the Bureau explains in detail its approach to the regulation of credit offered in connection with prepaid accounts. (That discussion provides an overall explanation of the Bureau's approach in this rulemaking to credit offered in connection with prepaid accounts, including with respect to changes to Regulation E, the details of which are set forth below.)

As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau is adopting a new definition of ''hybrid prepaid-credit card'' in new Regulation Z § 1026.61 which sets forth the circumstances in which a prepaid card is a credit card under Regulation Z.[313] A prepaid card that is a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61 is a credit card under final Regulation Z § 1026.2(a)(15)(i). *See also* new Regulation Z § 1026.61(a)(1) and new Regulation Z comment 2(a)(15)–2.i.F. As set forth in new Regulation Z § 1026.61(a)(1), a prepaid card that is not a ''hybrid prepaid-credit card'' is not a credit card for purposes of Regulation Z. *See also* new Regulation Z comment 2(a)(15)–2.ii.D.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section and in more detail in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features offered in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or business partners. New Regulation Z § 1026.61(b) generally requires that such credit features be structured as separate sub-accounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New Regulation Z § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New Regulation Z § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit credit as a ''covered separate credit feature.'' Thus, the hybrid prepaid-credit card accesses both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new Regulation Z § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as ''non-covered separate credit features,'' as discussed in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below. Under new Regulation Z § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit.[314] A prepaid card is not a hybrid prepaid-credit card under new Regulation Z § 1026.61 or a credit card under final Regulation Z § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of Regulation Z § 1026.61(a)(2) and (4) below.

As part of the Bureau's approach to the regulation of credit offered in connection with prepaid accounts, the Bureau's final rule revises the compulsory use provision of Regulation E, existing § 1005.10(e)(1), to make clear that it applies to covered separate credit features accessible by hybrid prepaid-credit cards as defined in new Regulation Z § 1026.61. The Bureau also is providing guidance to explain that incidental credit described in new Regulation Z § 1026.61(a)(4) is exempt from the compulsory use provisions in Regulation E, similar to checking overdraft services.

EFTA's compulsory use provision, EFTA section 913(1),[315] prohibits any person from conditioning the extension of credit to a consumer on the consumer's repayment by means of preauthorized EFTs. As implemented in Regulation E, existing § 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 EFTs, 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 existing § 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 EFT is defined in existing § 1005.2(k) to mean an EFT authorized in advance to recur at substantially regular intervals.

Congress enacted the compulsory use provision to prevent financial

[313] Throughout the section-by-section analyses of Regulations E and Z, the term ''hybrid prepaid-credit card'' refers to a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61.

[314] Throughout the section-by-section analyses of Regulations E and Z, the term ''incidental credit'' is used to refer to credit that meets the conditions of new Regulation Z § 1026.61(a)(4).

[315] 15 U.S.C. 1693k(1).

institutions that are creditors from mandating repayment of credit by future preauthorized EFTs. 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 debts, as a creditor could compel the consumer to grant the creditor preauthorized transfer access to the consumer's asset account as a condition for agreeing to provide credit to that consumer.

In adopting what is now existing § 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).[316]

The Bureau's Proposal

The Bureau proposed certain modifications to the compulsory use provision. In particular, the proposal would have provided that the provision's exception for overdraft credit plans would not have extended to overdraft credit plans accessed by prepaid cards that are credit cards under Regulation Z. Specifically, the proposal would have amended existing § 1005.10(e)(1) to provide that the exception for overdraft plans from the compulsory use provision 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. Thus, under the proposal, the compulsory use provision in proposed § 1005.10(e)(1) would have applied to overdraft credit plans accessed by prepaid cards that are credit cards under Regulation Z.

Under the proposal, existing comment 10(e)(1)–2 related to the exception for overdraft credit plans would have been amended to explain that this exception 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 § 1026.2(a)(15)(i).

The proposal would have added comment 10(e)(1)–3 to provide guidance on how the prohibition in proposed § 1005.10(e)(1) would have applied to credit extended under a credit plan that is a credit card account accessed by a prepaid card under Regulation Z as discussed above. Specifically, proposed comment 10(e)(1)–3 would have explained that under proposed § 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.

Proposed comment 10(e)(1)–3 also would have provided that the prohibition in proposed § 1005.10(e)(1) would have applied 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 proposed § 1005.10(e)(1) since it is incurred through a credit card plan, even though the consumer did not use an associated credit card.

Under Regulation Z proposed comment 2(a)(15)–2.i.F, a prepaid card would not have been a credit card under Regulation Z where 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), and is not payable by written agreement in more than four installments. Proposed comment 10(e)(1)–3 would have cross-referenced Regulation Z § 1026.2(a)(15)(i), proposed 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, under the proposal, the prohibition in proposed § 1005.10(e)(1) would not have applied to credit extended in connection with a prepaid account under an overdraft credit plan that is not a credit card account. Under the proposal, an overdraft credit plan would not have been a credit card account if it would have been 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 also would have explained the connection between the prohibition in proposed § 1005.10(e)(1) on the compulsory use of preauthorized EFT to repay credit extended under a credit plan accessed by prepaid cards that are credit cards under existing Regulation Z § 1026.2(a)(15)(i) and proposed comment 2(a)(15)–2.i.F, and the prohibition on offsets by credit card issuers in proposed Regulation Z § 1026.12(d). Under existing 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, a card issuer generally would not have been prohibited 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 under a plan that is authorized in writing by the cardholder, so long as the creditor does not make such deductions to the plan more frequently than once per calendar month. Therefore, a card issuer for such credit card accounts would have been prohibited under proposed Regulation Z § 1026.12(d)(3) 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 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, EFTs pursuant to a plan described in Regulation Z § 1026.12(d)(3) would have been preauthorized EFTs under existing § 1005.2(k) because such EFTs 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 have explained that proposed § 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

[316] *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 credit plans] 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.'').

account is accessed by an access device for a prepaid account.

As a technical revision, the proposal also would have moved existing guidance in existing comment 10(e)(1)–1 related to when financial institutions may provide incentives to consumers to agree to automatic repayment plans to a new proposed comment 10(e)(1)–4; no substantive changes were intended.

Comments Received

A trade association and an issuing bank urged the Bureau not to adopt the proposed changes to the compulsory use exception in Regulation E for overdraft credit plans that are accessed by prepaid cards that are credit cards under Regulation Z. These commenters asserted that allowing financial institutions to recoup overdraft balances from incoming credits to the account is the only way for those institutions to mitigate the credit risk caused by overdrafts. These commenters suggested that the Bureau's proposed compulsory use and offset prohibitions, for example, would effectively deny consumers the ability to access short-term credit in connection with prepaid accounts. These concerns about the rule's impact on small-dollar credit are discussed in more detail below in the *Overview of the Final Rule's Amendments to Regulation* Z section.

Nonetheless, other industry trade associations representing credit unions agreed with the Bureau's proposal not to extend the overdraft credit plan exception in the compulsory use provision in existing § 1005.10(e)(1) to overdraft credit plans accessed by prepaid cards that are credit cards under Regulation Z.

One consumer group likewise supported the Bureau's proposal not to exempt from the compulsory use provision in existing § 1005.10(e)(1) overdraft credit plans that are accessed by prepaid cards that are credit cards under Regulation Z. This commenter stated that giving consumers control over how and when to repay overdraft credit would protect consumers that hold prepaid cards that are credit cards under Regulation Z and give creditors incentives to consider whether those consumers have the ability to pay credit that will be extended under such overdraft credit plans. This commenter also noted that the exemption from the compulsory use provision for overdraft credit plans is not statutory.

The Final Rule

Covered separate credit features accessible by hybrid prepaid-credit cards. For the reasons set forth herein, the Bureau is finalizing § 1005.10(e)(1) as proposed with certain revisions to be consistent with provisions in new Regulation Z § 1026.61 for when a prepaid card is a credit card under Regulation Z.[317] Specifically, the Bureau has modified existing § 1005.10(e)(1) to provide that the overdraft credit plan exception in existing § 1005.10(e)(1) does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61. As discussed above, under the final rule, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new Regulation Z § 1026.61(a)(4)).

Consistent with the intent of the proposal, the Bureau has revised existing comment 10(e)(1)–2 which relates to the exception for overdraft credit plans. The final rule has moved existing comment 10(e)(1)–2 to new comment 10(e)(1)–2.i and revised it to provide that the exception for overdraft credit plans in final § 1005.10(e)(1) applies to overdraft credit plans other than for a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61. Proposed comment 10(e)(1)–3 would have referenced guidance on when a prepaid card would not have been a credit card under Regulation Z as proposed, such that the overdraft exception in proposed § 1005.10(e)(1) would have still applied to credit accessed by those prepaid cards. The final rule moves this guidance to final comment 10(e)(1)–2.ii and revises it as discussed below.

In addition, the Bureau is finalizing the other guidance in proposed comment 10(e)(1)–3, renumbered as new comment 10(e)(1)–3.i, with revisions to be consistent with new Regulation Z § 1026.61. Specifically, final comment 10(e)(1)–3.i explains that under final § 1005.10(e)(1), creditors may not require by electronic means on a preauthorized, recurring basis repayment of credit extended under a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61. Consistent with the proposal, final comment 10(e)(1)–3.i also clarifies that the prohibition in final § 1005.10(e)(1) applies to any credit extended under such a credit feature, including preauthorized checks. Final comment 10(e)(1)–3.i also cross-references new Regulation Z § 1026.61 and new comment 61(a)(1)–3, which provide guidance related to the credit extended under a covered separate credit feature by use of a preauthorized check on the prepaid account.

Also, the Bureau has moved the guidance in proposed comment 10(e)(1)–3.i to new comment 10(e)(1)–3.ii and has revised it to be consistent with new Regulation Z § 1026.61. New comment 10(e)(1)–3.ii explains the connection between the prohibition in final § 1005.10(e)(1) on the compulsory use of preauthorized EFTs to repay credit extended under a covered separate credit feature accessible by a hybrid prepaid-credit card, as defined in Regulation Z § 1026.61, and the prohibition on offsets by credit card issuers in final Regulation Z § 1026.12(d). Specifically, new comment 10(e)(1)–3.ii provides that under existing 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 final Regulation Z § 1026.12(d)(3), with respect to covered separate credit features accessible by hybrid prepaid-credit cards as defined in new Regulation Z § 1026.61, a card issuer generally is not prohibited 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 under a plan that is authorized in writing by the cardholder, so long as the card issuer does not make such deductions to the plan more frequently than once per calendar month. A card issuer therefore is prohibited under final Regulation Z § 1026.12(d)(3) from automatically deducting all or part of the cardholder's

[317] The Regulation Z proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed § 1005.10(e)(1) would have provided that the compulsory use provision's general prohibition against conditioning the extension of credit to a consumer on the consumer's repayment by means of preauthorized EFTs would have applied to credit card accounts under Regulation Z accessed by such account numbers. Proposed comments 10(e)(1)–2 and –3 would have provided additional guidance on how proposed § 1005.10(e)(1) would have applied to these credit card plans accessed by these account numbers. For the reasons set forth in the section-by-section analysis of Regulation Z § 1026.2(a)(15)(i) below, the final rule does not adopt the provisions related to the account numbers that would have made these account numbers into credit cards under Regulation Z. Thus, the provisions in proposed § 1005.10(e)(1) and proposed comments 10(e)(1)–2 and –3 in connection with these account numbers have not been adopted.

credit card debt from a covered separate credit feature from a deposit account (such as a prepaid account) held with the card issuer on a daily or weekly basis, or whenever deposits are made to the deposit account. In Regulation E, final § 1005.10(e)(1) provides a complementary prohibition on the card issuer from requiring payment from a deposit account (such as a prepaid account) of credit card balances of a covered separate credit feature accessible by a hybrid prepaid-credit card by electronic means on a preauthorized, recurring basis.

Consistent with the proposal, as a technical revision, the Bureau has moved 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 change is intended.

Consistent with the statutory text and purposes of EFTA, the Bureau is not extending the exception for overdraft credit plans currently in § 1005.10(e)(1) to covered separate credit features accessible by hybrid prepaid-credit cards as defined in new Regulation Z § 1026.61. The purposes of EFTA are to establish the rights, liabilities, and responsibilities of consumers participating in EFT systems and to provide individual consumer rights.[318] Further, EFTA's legislative history states that the EFTA compulsory use provision is designed to assure that ''EFT develops in an atmosphere of free choice for the consumer.'' [319] The Bureau believes its final rule, which does not extend Regulation E's existing exception for overdraft credit plans to covered separate credit features accessible by hybrid prepaid-credit cards, should ensure that consumers have choice when deciding whether and how to link their prepaid accounts to covered separate credit features accessible by hybrid prepaid-credit cards and have control over the funds in their prepaid accounts if and when such a link is established.

As discussed in greater detail in the section-by-section analyses of Regulation Z §§ 1026.5(b)(2)(ii), 1026.7(b)(11), and 1026.12(d) below, the Bureau also believes that not extending the exception for overdraft credit plans to covered separate credit features accessible by hybrid prepaid-credit cards is consistent with the purposes of and provisions in TILA. In particular, TILA section 169 prohibits offsets by credit card issuers.[320] In addition, TILA sections 127(b)(12) and (o) require that for credit card accounts under an open-end consumer credit plan, payment due dates—which must be the same date each month—must be disclosed on the Regulation Z periodic statement.[321] In addition, TILA section 163 provides that, for credit card accounts under an open-end consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that: (1) Periodic statements for those accounts are mailed or delivered at least 21 days prior to the payment due date disclosed on the Regulation Z statement as discussed above; 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 Regulation Z periodic statement disclosing the due date for that payment.[322]

In particular, the Bureau believes that the revisions to existing § 1005.10(e)(1) complement the offset prohibition and the periodic statement requirements in Regulation Z by helping to ensure that consumers do not lose access to prepaid account funds and lose the ability to prioritize repayment of debts, one of the main purposes of EFTA section 913(1), as implemented by final § 1005.10(e)(1). The Bureau is concerned that absent these protections, with respect to covered separate credit features accessible by hybrid prepaid-credit cards, some card issuers might attempt to avoid the TILA offset prohibition by requiring that all or part of the cardholder's credit card debt under the covered separate credit feature 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 its revisions to the compulsory use provision, financial institutions might require that prepaid account consumers set up automated payment plans to repay the credit card debt under the covered separate credit feature and set the payment due date each month to align with the expected date of incoming deposits to the prepaid account. The Bureau believes that this type of payment arrangement would undermine the purposes of EFTA section 913(1), as implemented by final § 1005.10(e)(1), which is designed to help ensure that consumers do not lose access to account funds and lose the ability to prioritize repayment of debts. Thus, the Bureau does not believe that it is appropriate to extend the exception for overdraft credit plans to covered separate credit features accessible by hybrid prepaid-credit cards.

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 this final rule consumers would still be allowed to *choose* to make payments on the covered separate credit features on an automatic basis once per month if they find it beneficial to do so. The Bureau also believes that certain credit card rules in Regulation Z that apply under the final rule to covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan will help consumers avoid late payments and excessive late fees with respect to their covered separate credit features. For example, as discussed above, under the final rule, card issuers would be required, under final Regulation Z § 1026.5(b)(2)(ii)(A)(*1*), to adopt reasonable procedures to ensure that Regulation Z periodic statements for covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement. The Bureau believes this will help ensure that consumers have sufficient time after receiving a periodic statement for such a covered separate credit feature accessible by a hybrid prepaid-credit card to make a payment on that credit feature. Also, as discussed in more detail in the section-by-section analyses of Regulation Z §§ 1026.52(b) and 1026.55 below, with respect to covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers are limited in the circumstances in which they could increase interest rates for late payments and are limited in the amount of late fees they could charge to consumers who pay late, as set forth in final Regulation Z §§ 1026.52(b) and 1026.55.

Credit features not accessible by hybrid prepaid-credit cards. As discussed above, the final rule moves existing comment 10(e)(1)–2 to new comment 10(e)(1)–2.i and revises it to provide that the exception for overdraft

[318] *See* EFTA section 902(b); 15 U.S.C. 1693(b).

[319] *See* Senate Report No. 95–915 at 16 (1978).

[320] 15 U.S.C. 1666h(a); *see also* Regulation Z § 1026.12(d).

[321] 15 U.S.C. 1637(b)(12) and (o); *see also* Regulation Z § 1026.7(b)(11)(i)(A).

[322] 15 U.S.C. 1666b; *see also* Regulation Z § 1026.5(b)(2)(ii)(A).

credit plans in final § 1005.10(e)(1) applies to overdraft credit plans other than for a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z § 1026.61. Proposed comment 10(e)(1)–3 would have referenced guidance on when a prepaid card would not have been a credit card under Regulation Z as proposed, such that the overdraft exception in proposed § 1005.10(e)(1) would have still applied to credit accessed by those prepaid cards. As explained in more detail below, the final rule moves this guidance to final comment 10(e)(1)–2.ii and revises it.

As discussed in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new Regulation Z § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new Regulation Z § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new Regulation Z § 1026.61 or a credit card under final Regulation Z § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of Regulation Z § 1026.61(a)(2) and (4) below.

New comment 10(e)(1)–2.i provides that the exception for overdraft credit plans in final § 1005.10(e)(1) applies to overdraft credit plans other than for a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z § 1026.61. The final rule also adds new comment 10(e)(1)–2.ii to provide additional guidance on the application of the exception in § 1005.10(e)(1) with respect to the circumstances described above in which a prepaid card is not a credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. Specifically, new comment 10(e)(1)–2.ii provides that credit extended through a negative balance on the asset feature of a prepaid account that meets the conditions of Regulation Z § 1026.61(a)(4) is considered credit extended pursuant to an overdraft credit plan for purposes of § 1005.10(e)(1). Thus, the exception for overdraft credit plans in § 1005.10(e)(1) applies to this credit.

A credit feature that does not qualify as a covered separate credit feature under new Regulation Z § 1026.61 because it cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers would be subject to the compulsory use rule under final § 1005.10(e)(1); the exception to final § 1005.10(e)(1) does not apply because such a credit product is not an overdraft line of credit or overdraft service. The Bureau also does not believe that the exception to § 1005.10(e)(1) would be invoked with regard to a credit feature that does not qualify as a covered separate credit feature under new Regulation Z § 1026.61 because it is offered by an unrelated third party, since that unrelated third party will typically not be aware that the consumer had chosen to link the credit feature to his or her prepaid account.

10(e)(2) Employment or Government Benefit

The Bureau's Proposal

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 EFTs 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.[323]

No parallel comment currently exists with respect to the application of the compulsory use provision to the distribution of government benefits. In the proposal, the Bureau noted that questions had arisen as to whether the compulsory use prohibition applied to prepaid cards used to distribute non-needs tested government benefits. 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.'' To provide greater clarity, the Bureau proposed to add comment 10(e)(2)–2, which would have stated that a government agency could not require consumers to receive government benefits by direct deposit to any particular institutions. The comment would have also stated that a government agency could, alternatively, require recipients to receive their benefits via direct deposit, so long as the recipient could choose which institution would receive the deposit, or provide recipients with a choice of having their benefits deposited at a particular institution or receiving their benefits via another means.

The Bureau sought comment on whether a financial institution complies with the compulsory use prohibition if it provides the first payment to a benefit recipient on a government benefit card and, at that same time, provides information on how to divert or otherwise direct future payments to an account of the consumer's choosing. In addition, the Bureau sought comment on whether a similar restriction on compulsory use 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.

Comments Received

Requests to clarify whether certain enrollment methods comply with § 1005.10(e)(2). Two commenters—a program manager of government benefit cards and a State government agency—generally objected to the Bureau's proposal to clarify the application of compulsory use to government agencies. They argued that government agencies should be allowed to require that consumers receive their benefit payments on a prepaid card of the agency's choosing, since doing so allows the agencies to save money by outsourcing the disbursement process and preventing fraud related to false benefits claims. These commenters

[323] In September 2013, the Bureau reiterated the applicability of Regulation E's prohibition on compulsory use for payroll card accounts. 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.* 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. *Id.* at 3.

urged the Bureau to remove proposed comment 10(e)(2)–2. In the alternative, the program manager, along with a payment network and several other State government agency commenters, urged the Bureau to clarify that a covered person complies with § 1005.10(e)(2) by providing the first payment to a government benefit recipient on a prepaid card and, at that time, providing information to the recipient on how to divert or otherwise direct future payments to an account of the his or her choosing. According to these commenters, this enrollment method would allow the financial institution or other person to adopt a single, streamlined on-boarding process for beneficiaries, while still providing consumers with a real—if delayed—choice on how to receive their payments. One State government agency argued that, if the Bureau did not adopt the requested clarification allowing agencies to unilaterally disburse funds onto prepaid cards, the Bureau should delay the rule's effective date with respect to government benefit accounts to allow the agencies to identify and implement the most economical and efficient means of complying with the compulsory use prohibition.

Other commenters, including issuing banks, program managers, trade associations, a payment network, and an employer that disburses compensation via payroll card accounts, asked the Bureau to address situations—for both government benefit accounts and payroll card accounts—where the consumer is provided a choice but does not make a selection. Specifically, these commenters asked the Bureau to confirm in the final rule that a financial institution or other person complies with the compulsory use prohibition by providing a consumer with two or more alternative methods for receiving funds, and, if the consumer fails to affirmatively select from among the available methods within a prescribed period of time, disbursing the consumer's payment to a pre-selected, default enrollment method, such as a payroll card account or government benefit account. According to these commenters, this method of enrollment is standard practice among many employers and government benefit programs, and is in fact permitted under some State laws. Mandating changes to these existing practices, they argued, would require costly system changes.

Several consumer group commenters, by contrast, urged the Bureau to clarify that a financial institution or other person that unilaterally enrolls a consumer in a payroll card account or government benefit account program violates the compulsory use prohibition, regardless of whether the person only disburses the consumer's initial payment onto that card or provides the consumer with information about how to divert future payments to an account of the consumer's choosing. In general, these commenters argued that an automatic, unilateral disbursement of a first payment onto a prepaid card is tantamount to a condition that the consumer have an account with a particular institution in order to receive his or her salary or government benefit, in violation of the compulsory use prohibition. Moreover, these commenters argued, default options are ''sticky,'' meaning that once consumers are enrolled in one payment method, they are unlikely to go through the effort to un-enroll or otherwise direct payments to another account. In other words, the commenters asserted, a consumer who continues to receive payments to a payroll card account or government benefit account after being unilaterally enrolled in that card program has not made an affirmative choice to be paid that way. A nonprofit organization representing the interests of restaurant workers provided the Bureau with survey results showing that more than a quarter of employees at a particular restaurant company who responded to the organization's survey reported that they were never told that they had options other than a payroll card account by which to receive their wages. With regards to the possibility of a financial institution's use of a default enrollment method where consumers are provided with a choice of payment method but fail to communicate a preference after a certain period of time, one consumer group indicated that it was not categorically opposed to this practice, but suggested that the period the financial institution should have to wait before enrolling a non-responsive consumer in a default enrollment method should be 30 days or more.

One consumer group commenter asked the Bureau to go further and require that, in order to comply with the compulsory use prohibitions, a financial institution or other person obtain a consumer's written consent before disbursing the consumer's payment via a payroll card account or government benefit account. Another consumer group argued that the Bureau should mandate a specific waiting period before a consumer was required to make a selection with respect to his or her preferred payment method.

Requests to expand the scope of § 1005.10(e)(2) beyond payment of salary or government benefit. Although it did not propose alterations to the scope of the compulsory use prohibition, the Bureau did seek comment on whether a similar restriction should be extended to other types of prepaid accounts, as discussed above. In response, numerous consumer group commenters urged the Bureau to expand the compulsory use prohibition to other types of prepaid accounts used by third parties to disburse funds to consumers, including accounts used to disburse student aid or student loans, accounts used to disburse insurance or workers' compensation payments, and accounts used by correctional facilities to disburse funds to incarcerated or formerly incarcerated individuals. The commenters expressed concern that consumers in these circumstances could not otherwise avoid the high fees or restrictive terms and conditions that they allege often accompany such cards, if the consumers must accept the cards to access their funds.

Several commenters, including several members of Congress, pointed to prison release cards as a particularly troubling example of a prepaid account product that they say comes with high fees and terms and conditions that limit consumers' ability to access their own funds. Funds disbursed onto prison release cards may include prison job wages or public benefits paid to the prisoner while in prison. The commenters argued that consumers who receive these prepaid products should have a choice with respect to how they get paid. In the alternative, the commenters urged the Bureau to limit fees on cards that the consumer has to accept, as well as on cards issued on an unsolicited basis. In response, a commenter that manages several prison release card programs, as well as other ''correction-related'' services submitted a comment disputing the consumer groups' allegations with respect to its programs. This commenter objected to the suggestion that its prepaid products are or should be subject to the compulsory use provision. Among other arguments, the commenter noted that prison release cards are a superior alternative to checks, which are often accompanied by excessive check cashing fees, or cash, which can be mismanaged by correctional staff. This commenter also took issue with the suggestion that its prepaid account programs are accompanied by particularly high fees, noting that State departments of corrections that bid for its services look carefully at the fees charged to card users. The commenter provided fee schedules for several of its programs that it argued show that the

programs' cardholder fees are not exorbitant.

The Final Rule

For the reasons set forth herein, the Bureau is adopting comment 10(e)(2)–2 as proposed with minor modifications for clarity and conformity. The Bureau declines to amend regulatory text or adopt additional commentary as requested by some commenters. The Bureau continues to believe it is important that consumers have a choice with respect to how they receive their salary or government benefits. Whether a financial institution or other person complies with § 1005.10(e)(2), therefore, depends on whether the financial institution or other person provides the consumer with a choice regarding how to receive his or her payment. For example, a financial institution or other person that mandates that consumers receive their salary or government benefit on a specific prepaid card violates EFTA section 913(2) and § 1005.10(e)(2), as the statutory and regulatory text make clear. Accordingly, the Bureau declines to revise § 1005.10(e)(2) to allow government agencies to require consumers to receive government benefits on a prepaid card of the agency's choosing, as some commenters requested.

Likewise, after considering the comments on this issue, the Bureau agrees with consumer group commenters that a financial institution or other person that mandates that a consumer receive the *first* payment of salary or government benefits on a prepaid card does not give the consumer a choice regarding how to receive the payment, even if the consumer can later re-direct the payment to an account of his or her choice.[324] In such a scenario, the consumer does not have a choice with respect to how to receive the first payment of salary or government benefit; rather, at least with respect to that first payment, the consumer was required to establish an account with the financial institution that issued the prepaid account as a condition of receiving the funds.

The Bureau does not at this time and on this record believe it would be appropriate to set a bright-line test based solely on amount of time or whether the consumer agrees to the preferred payment method in writing, as some commenters suggested. As the Bureau noted in the proposal, there are many ways a consumer can obtain a prepaid account, and the Bureau believes its disclosure regime should be—and is—adaptable to this variety.[325] The Bureau notes that how long a consumer had to select a preferred payment method may not always be indicative of whether the consumer was given a choice regarding how to receive his payment. For example, a company's policies and procedures may dictate that employees be given at least two weeks to select a preferred payment method. However, such a policy may not help an employee who is ordered by his direct supervisor to accept wages via a payroll card. Likewise, the way a consumer expresses her preferred payment method may not be indicative of whether she exercised a choice with respect to how to receive her payments. Relatedly, as some industry commenters noted, consumers are sometimes given a choice between two or more payment alternatives, but may fail to indicate their preference. Depending on the facts and circumstances—for example, the date by which the consumer has to be paid her wages under State law—it may be reasonable for a financial institution or other person in this scenario to employ a reasonable default enrollment method.

The Bureau also declines to amend existing regulatory text or adopt additional commentary concerning which alternative payment methods must be made available to a consumer to comply with the compulsory use prohibition. In response to requests for clarification from a member of Congress and an industry commenter on the one hand, and several consumer group commenters on the other, the Bureau notes that the compulsory use prohibition does not amount to a requirement that a financial institution or other person provide a consumer with any particular alternative to a prepaid account. More specifically, § 1005.10(e)(2) does not mandate that a covered person offer a consumer the option of getting paid by paper check (to address concerns from the member of Congress and industry commenter), nor require that one of the payment options made available to the consumer be direct deposit to an account of the consumer's choosing (as the consumer groups requested). Rather, the consumer must not be required to establish a particular account and must be presented with at least one alternative to the prepaid account, which may be a paper check, direct deposit to the consumer's bank account or to her own prepaid account, or some other payment method.

With respect to the comments recommending that the Bureau expand application of the compulsory use prohibition to other types of prepaid accounts, the Bureau has concluded that it would not be appropriate to take such a step at this time. The compulsory use prohibition has been in place and largely unchanged since its adoption in 1978 in EFTA.[326] The Bureau believes it would be inappropriate to alter the application of the prohibition in the manner suggested by commenters in this final rule without additional public participation and information gathering about the specific product types at issue. The Bureau notes that to the extent that student, insurance, or prison release cards are used to disburse consumers' salaries or government benefits, as defined under applicable law, such accounts are already covered by § 1005.10(e)(2) and will continue to be so under this final rule. The Bureau notes further that it is continuing to monitor financial institutions' and other persons' practices relating to consumers' lack of choice (including with respect to prepaid accounts that are not subject to the compulsory use prohibitions). Depending on the facts and circumstances, the Bureau may consider whether exercise of the Bureau's authority under title X of the Dodd-Frank Act, including its authority over unfair, deceptive, or abusive acts or practices, would be appropriate.

Section 1005.11 Procedures for Resolving Errors

11(c) Time Limits and Extent of Investigation

The Bureau is making a conforming change to § 1005.11 to except unverified accounts from the provisional credit requirements therein, in conformance with changes to the error resolution requirements for prepaid accounts in revised § 1005.18(e) below.

EFTA section 908 governs the timing and other requirements for consumers and financial institutions pertaining to 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) require that a financial institution, after receiving notice that a consumer believes an EFT from the consumer's account was not authorized, must investigate promptly and determine whether an error occurred (*i.e.,* whether

[324] The Bureau likewise declines to grandfather in or provide an extended timeframe to amend or rebid existing vendor contracts for government benefit accounts beyond the final rule's general effective date, as requested by some commenters. See the section-by-section analysis of § 1005.18(h) below for a more detailed discussion of the final rule's effective date.

[325] 79 FR 77102, 77148 (Dec. 23, 2014).

[326] EFTA section 913; Public Law 95–630, 92 Stat. 3737 (1978) (codified at 15 U.S.C. 1693k).

the transfer was unauthorized), within 10 business days (20 business days if the EFT occurred within 30 days of the first deposit to the account). Existing § 1005.11(c)(2) provides that if the financial institution is unable to complete the investigation within 10 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 10 business days of receiving the error notice.[327] Provisional credit is not required if the financial institution requests but does not receive written confirmation within 10 business days of an oral notice by the consumer, or if the alleged error involves an account that is subject to Regulation T of the Board of Governors of the Federal Reserve System (Securities Credit by Brokers and Dealers, 12 CFR part 220).[328]

The Bureau proposed in § 1005.18(e)(2) 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). In addition, the Bureau proposed to use its exception authority under EFTA section 904(c) to propose § 1005.18(e)(3); that provision would have provided that for prepaid accounts that are not payroll card accounts or government benefit accounts, if a financial institution disclosed 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 would not have been required to comply with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any prepaid account for which it had not completed its collection of consumer identifying information and identity verification.

As discussed in greater detail in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is revising the limitation on financial institutions' obligations to provide limited liability and error resolution protections for prepaid accounts that have not completed the consumer identification and verification process. Rather than allow financial institutions to forego providing all of the limited liability and error resolution protections for such unverified accounts, as the Bureau proposed, the final rule allows financial institutions to forego extending provisional credit to such accounts as part of the error resolution process—under the final rule, therefore, financial institutions may take up to 45 days (or 90 days, where applicable) to investigate an error claim without provisionally crediting the account in the amount at issue for prepaid accounts with respect to which the financial institution has not completed its consumer identification and verification process. To implement this revision, the Bureau is adopting an exception to the general requirement in § 1005.11(c)(2) that a financial institution must provide provisional credit if it takes longer than 10 business days to investigate and determine whether an error occurred. As stated above, there are two existing exceptions listed in § 1005.11(c)(2)(i)(A) (no provisional credit where institution required, but did not receive, written confirmation of the oral notice of error within 10 business days) and § 1005.11(c)(2)(i)(B) (no provisional credit where error involves an account subject to the Board's Regulation T). The Bureau is adding a third exception in new § 1005.11(c)(2)(i)(C), which, together with § 1005.11(c)(2)(i), provides that a financial institution does not have to provisionally credit a consumer's account if the alleged error involves a prepaid account, other than a payroll card account or government benefit account, for which the financial institution has not completed its consumer identification and verification process, as set forth in § 1005.18(e)(3)(ii).[329] The Bureau believes it is necessary and proper to finalize this exclusion pursuant to its authority under EFTA section 904(c) to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers.

By adding an exception for unverified accounts to the provisional credit requirement set forth in § 1005.11(c)(2)(i), the Bureau intends to clarify the scope of the revised exception in final § 1005.18(e)(3). Specifically, although the Bureau is finalizing a provision that would allow financial institutions not to extend provisional credit to prepaid accounts for which the financial institution has not completed its consumer identification and verification process, all other timing and related requirements set forth in § 1005.11(c), as modified by final § 1005.18(e)(2), will apply to both verified and unverified accounts. The addition of new § 1005.11(c)(2)(i)(C), therefore, is intended to make clear that accounts referenced in that provision are only exempted from the provisional credit requirement in § 1005.11(c)(2)(i), and not from any other provisions of § 1005.11(c). Final §§ 1005.11(c)(2)(i)(C) and 1005.18(e)(3) reference each other for added clarity.

A full discussion of the Bureau's revisions to the limited liability and error resolution requirements for prepaid accounts in this final rule can be found in the section-by-section analysis of § 1005.18(e) below.

Section 1005.12 Relation to Other Laws

12(a) Relation to Truth in Lending

Existing § 1005.12(a) provides guidance on whether the issuance provisions in existing Regulation E § 1005.5 or the unsolicited issuance provisions in existing 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 Regulation Z below.) In addition, existing § 1005.12(a) also provides guidance on how the provisions on liability for unauthorized use and for resolving errors in existing Regulation E §§ 1005.6 and 1005.11 and existing Regulation Z §§ 1026.12(b) and 1026.13 interact where a credit transaction is incidental to an EFT.

Issuance Rules

The Bureau's Proposal

Consistent with EFTA section 911(a),[330] existing § 1005.5(a) provides that a financial institution generally may issue an access device for an account that is subject to Regulation E 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),[331] existing § 1005.5(b) provides that a financial institution may distribute an access device to a

[327] The financial institution has 90 days (instead of 45) to investigate 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. § 1005.11(c)(3)(ii).

[328] § 1005.11(c)(2)(i)(A) and (B).

[329] Pursuant to § 1005.18(e)(3)(ii), a financial institution has not completed its consumer identification and verification process where it has not concluded its consumer identification and verification process; it has concluded its consumer identification and verification process, but could not verify the identity of the consumer; or it does not have a consumer identification and verification process by which the consumer can register the prepaid account. See the section-by-section analysis of § 1005.18(e)(3) below for a detailed explanation of these provisions and related commentary.

[330] 15 U.S.C. 1693i(a).

[331] 15 U.S.C. 1693i(b).

consumer on an unsolicited basis if four enumerated situations are met. These exceptions are particularly important to issuance of debit cards to access checking accounts for which the consumer is eligible for overdraft services or has opened an overdraft line of credit.

In contrast, the issuance rules for a credit card under Regulation Z are more restrictive. Consistent with TILA section 132,[332] existing 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.

Existing § 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, existing § 1005.12(a)(1) currently provides that EFTA and Regulation E govern: (1) The addition to an accepted credit card, as defined in Regulation Z (existing § 1026.12, comment 12–2), of the capability to initiate EFTs; (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 existing § 1005.17(a)); and (3) the addition of an overdraft service, as defined in existing § 1005.17(a), to an accepted access device.

On the other hand, existing § 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 as discussed above. The application of these various provisions to prepaid accounts and revisions to the relevant prongs of existing § 1005.12 are discussed below. The proposal would have amended provisions in existing § 1005.12(a)(1)(ii) so that the rules in TILA and Regulation Z would govern whether a prepaid card could be a credit card when it is issued. Proposed Regulation Z § 1026.12(h) (renumbered as new § 1026.61(c) in the final rule) would have required a credit card issuer to wait at least 30 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. Thus, proposed Regulation Z § 1026.12(h) would have prevented a prepaid card from being a credit card at the time it was issued if it was issued before the expiration of the 30-day period set forth in proposed Regulation Z § 1026.12(h). Under the proposal, because a prepaid card could not have been a credit card at the time it was issued if it was issued before the expiration of the 30-day period discussed above, the issuance of such a prepaid card would have been governed under the issuance rules in EFTA and Regulation E.

Existing § 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 the issuance of an access device that permits credit extensions pursuant to a preexisting overdraft line of credit or under an overdraft service as discussed in existing § 1005.12(a)(1)(ii). Existing § 1005.12(a)(1)(ii) provides that the issuance rules of EFTA and Regulation E 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 existing § 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, existing § 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. In contrast, Regulation Z's issuance rules apply if the access device can access another type of credit feature when it is issued; for example, one permitting direct extensions of credit that do not involve the asset account. Existing comment 12(a)–2 provides 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) or an overdraft service, as defined in existing § 1005.17(a). Regulation Z 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.

The proposal would have amended existing § 1005.12(a)(1)(ii) to provide that this provision relating to preexisting overdraft lines of credit and overdraft services does not apply to access devices for prepaid accounts. The proposal also would have moved existing comment 12(a)–2 related to preexisting overdraft lines of credit and overdraft services to proposed comment 12(a)–1 and would have revised the comment to explain that it does not apply to access devices for prepaid accounts. Thus, under the proposal, because the existing exception for preexisting overdraft line of credit and overdraft services would not have applied to an access device for a prepaid account, the issuance rules in TILA and Regulation Z would have applied to the issuance of a prepaid card that also a credit card at the time it is issued.

Nonetheless, under the proposal, in proposed Regulation Z § 1026.12(h) (renumbered as new § 1026.61(c) in the final rule), a prepaid card could not have been a credit card when it was issued if it was issued before the expiration of the 30-day period set forth in proposed § 1026.12(h). Proposed Regulation Z § 1026.12(h) would have required a credit card issuer to wait at least 30 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 proposed to comment 12(a)–3 to explain that an access device for a prepaid account may not access a credit card account when the access device is issued and would have cross referenced proposed Regulation Z § 1026.12(h). Under the proposal, because a prepaid card could not have been a credit card when it was issued if it was issued before the expiration of the 30-day period set forth in proposed Regulation Z § 1026.12(h), the issuance of such a prepaid card would have been governed under the issuance rules in EFTA and Regulation E.

The proposal also would have amended existing § 1005.12(a)(1)(iii)

[332] 15 U.S.C. 1642.

and (2)(i) to address whether Regulation E or Regulation Z governs the addition of a credit feature or plan (including an overdraft credit plan) to a previously issued access device for a prepaid account where the credit feature or plan would have made the access device into a credit card under Regulation Z. Existing § 1005.12(a)(1)(iii) provides that the issuance rules of EFTA and Regulation E govern the addition of an overdraft service, as defined in existing § 1005.17(a), to an accepted access device. The proposal would have amended existing § 1005.12(a)(1)(iii) to provide that this provision does not apply to access devices for prepaid accounts. The proposal also would have moved comment 12(a)–3 which discussed overdraft services as defined in existing § 1005.17(a) to proposed comment 12(a)–2 and revised 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 below, the proposal would have revised the term ''overdraft service'' as defined in existing § 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 have been subject to the provisions in Regulation Z.

The proposal also would have amended existing § 1005.12(a)(2)(i) to provide that the unsolicited issuance rules in TILA and existing Regulation Z § 1026.12(a) would have applied 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. The proposal would have added proposed comment 12(a)–4 that would have explained 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 also would have stated that Regulation Z (existing § 1026.2(a)(20), proposed comment 2(a)(20)–2.ii) would have provided guidance on whether a program constitutes a credit plan, and that Regulation Z (existing § 1026.2(a)(15)(i), proposed comment 2(a)(15)–2) would have defined the term credit card and provided examples of cards or devices that are and are not credit cards.

Comments Received and the Final Rule

The Bureau did not receive any specific comments on its proposal to amend existing § 1005.12(a) and related commentary with respect to the issuance rules, other than those related to general comments from industry not to cover overdraft plans offered on prepaid accounts under Regulation Z. See the *Overview of the Final Rule's Amendments to Regulation Z* section for a discussion of those comments.

As explained in more detail below, with respect to the issuance rules, the Bureau is amending existing § 1005.12(a) and related commentary consistent with the proposal, with revisions to clarify the intent of the provisions and to be consistent with new Regulation Z § 1026.61.

Issuance of a prepaid card. As discussed above, existing § 1005.12(a)(2)(ii) generally provides that the unsolicited issuance rules in TILA and Regulation Z, which prohibit the unsolicited issuance of credit cards, govern the issuance of a credit card that is also an access device. Existing § 1005.12(a)(1)(ii) provides that the issuance rules of EFTA and Regulation E 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 existing § 1005.17(a). Existing comment 12(a)–2 provides that for access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting overdraft line of credit attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) or an overdraft service, as defined in existing § 1005.17(a). Regulation Z 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.

Consistent with the proposal, the Bureau is amending existing § 1005.12(a)(1)(ii) to provide that this provision does not apply to access devices for prepaid accounts. Consistent with the proposal, the final rule moves existing comment 12(a)–2 related to preexisting overdraft lines of credit and overdraft services to final comment 12(a)–1 and revises it to explain that it does not apply to access devices for prepaid accounts. Thus, under the final rule, the existing exception in § 1005.12(a)(1)(ii) for credit extended under a preexisting overdraft line of credit or under an overdraft service does not apply to an access device that accesses a prepaid account. Thus, under the final rule, § 1005.12(a)(2)(ii) provides that the issuance rules in TILA and Regulation Z govern the issuance of an access device for a prepaid account that is a credit card at the time it is issued.

Nonetheless, under new Regulation Z § 1026.61(c), a prepaid card may not be a credit card under Regulation Z when it is issued if the prepaid card is issued prior to expiration of the 30-day period set forth in new § 1026.61(c). New Regulation Z § 1026.61(c) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card. As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new Regulation Z § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new Regulation Z § 1026.61 and a credit card under final Regulation Z § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed above, the proposal would have added comment 12(a)–3 to explain that an access device for a prepaid account may not access a credit card account when the access device is issued and would have cross referenced proposed Regulation Z § 1026.12(h). Consistent with the proposal, the Bureau is adopting new comment 12(a)–3, with revisions to clarify the intent of the provision and to be consistent with new Regulation Z § 1026.61. New comment 12(a)–3 provides that an access device for a prepaid account cannot access a covered separate credit feature as defined in new Regulation Z § 1026.61 when the access device is issued if the access device is issued prior to the expiration of the 30-day period set forth in new Regulation Z § 1026.61(c). New comment 12(a)–3 also explains that an access device for a prepaid account that is not a hybrid prepaid-credit card as that term is defined in new Regulation Z § 1026.61

is subject to the issuance rules in Regulation E. Because a prepaid access device cannot access a covered separate credit feature that would make the access device into a credit card when the access device is issued if the access device is issued prior to the expiration of the 30-day period set forth in new Regulation Z § 1026.61(c), the issuance rules in EFTA and Regulation E will apply to the issuance of the prepaid access device that does not access a covered separate credit feature as defined in new Regulation Z § 1026.61.

As discussed in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new Regulation Z § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new Regulation Z § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new Regulation Z § 1026.61 or a credit card under final Regulation Z § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of Regulation Z § 1026.61(a)(2) and (4) below.

The issuance rules in EFTA and Regulation E apply to those prepaid cards that are not hybrid prepaid-credit cards even though the prepaid card accesses the credit feature at the time the prepaid card is issued.

Addition of a covered separate credit feature to an existing access device for a prepaid account. The Bureau is amending existing § 1005.12(a)(2)(i) as proposed to provide that the issuance rules in TILA and Regulation Z govern 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.

The proposal would have added comment 12(a)–4 that would have explained 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 also would have stated that Regulation Z (existing § 1026.2(a)(20), proposed comment 2(a)(20)–2.ii) would have provided guidance on whether a program constitutes a credit plan, and that Regulation Z (existing § 1026.2(a)(15)(i), proposed comment 2(a)(15)–2) would have defined the term credit card and provided examples of cards or devices that are and are not credit cards. Consistent with the proposal, the Bureau is finalizing new comment 12(a)–4, with revisions to be consistent with new Regulation Z § 1026.61. New comment 12(a)–4 provides that Regulation Z governs the addition of a covered separate credit feature as that term is defined in new Regulation Z § 1026.61 to an existing access device for a prepaid account. In this case, the access device becomes a hybrid prepaid-credit card under Regulation Z. A credit card feature may be added to a previously issued access device for a prepaid account only upon the consumer's application or specific request as described in final Regulation Z § 1026.12(a)(1) and only in compliance with new Regulation Z § 1026.61(c), as discussed above. As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new Regulation Z § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new Regulation Z § 1026.61 and a credit card under final Regulation Z § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

For the reasons set forth in the Overview of the Final Rule's Amendments to Regulation Z section, the Bureau believes that credit card rules in Regulation Z, including the unsolicited issuance rules in final Regulation Z § 1026.12(a), should apply to hybrid prepaid-credit cards that access covered separate credit features. The Bureau believes that the more restrictive issuance rules in Regulation Z for issuance of a credit card are appropriate in this context. As discussed above, consistent with TILA section 132, final Regulation Z § 1026.12(a) provides that no credit card generally may be issued to any person on an unsolicited basis. This is in contrast to Regulation E which allows an access device to be provided to a consumer on an unsolicited basis if four enumerated situations are met.

The Bureau believes in particular that the addition of a covered separate credit feature to an accepted prepaid access device that would make the prepaid card into a hybrid prepaid-credit card causes a significant transformation with respect to a prepaid account. The Bureau believes that applying the Regulation Z unsolicited issuance rules to the addition of such a credit feature to a prepaid access device will help ensure that consumers must take affirmative steps to effect such a transformation by permitting financial institutions to link covered separate credit features to prepaid cards only in response to consumers' applications or requests that the credit features be linked. A card issuer also must comply with new Regulation Z § 1026.61(c) with respect to linking the covered separate credit feature to the prepaid card, as discussed above and in the section-by-section analysis of Regulation Z § 1026.61(c) below. New Regulation Z § 1026.61(c) will help ensure that consumers are fully aware of the implications of their decisions to link covered separate credit features to prepaid cards by prohibiting card issuers from linking a covered separate credit feature to a prepaid card until 30 days after the prepaid account has been registered.

Overdraft credit services defined in § 1005.17. Existing § 1005.12(a)(1)(iii) provides that the issuance rules of EFTA and Regulation E govern the addition of an overdraft service, as defined in existing § 1005.17(a), to an accepted access device. Existing comment 12(a)–3 provides that the addition of an overdraft service, as that term is defined in existing § 1005.17(a), to an accepted access device does not constitute the addition of a credit feature subject to Regulation Z. Instead, the provisions of Regulation E apply, including the liability limitations (existing § 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 (existing § 1005.17). The proposal would have provided that existing § 1005.12(a)(1)(iii) would not have applied to access devices for prepaid accounts. The proposal would have moved existing comment 12(a)–3 to proposed comment 12(a)–2 and would have revised it to provide that the

comment does not apply to access devices for prepaid accounts.

The final rule does not adopt the proposed changes to existing § 1005.12(a)(1)(iii). The final rule moves existing comment 12(a)–3 to new comment 12(a)–2 for organizational purposes, but does not amend the comment as proposed. The Bureau has not adopted the proposed amendments to existing § 1005.12(a)(1)(iii) and new comment 12(a)–2 because the Bureau believes such revisions are unnecessary in light of changes in other parts of the rule. As discussed in the section-by-section analysis of § 1005.17 below, the Bureau is adding § 1005.17(a)(4) to provide that an overdraft service does not include any payment of overdrafts pursuant to (1) a credit feature that is a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61; or (2) credit extended through a negative balance on the asset feature of the prepaid account that meets the conditions of new § 1026.61(a)(4). Thus, because a covered separate credit feature accessible by a hybrid prepaid-credit card is not an overdraft service under final § 1005.17(a), existing § 1005.12(a)(1)(iii) and new comment 12(a)–2 related to the addition of an overdraft service as defined in final § 1005.17(a) to an access device are not applicable to a covered separate credit feature accessible by a hybrid prepaid-credit card.

Rules Applicable to Limits on Liability for Unauthorized Use and to Billing Errors Procedures

The Bureau's Proposal

Current § 1005.6 generally sets forth provisions for when a consumer may be held liable, within the limitations described in existing § 1005.6(b), for an unauthorized EFT involving the consumer's account. Current § 1005.11 generally sets forth the procedures for resolving errors relating to EFTs involving a consumer's account. The Bureau is adding new § 1005.18(e) to set forth a consumer's liability for unauthorized EFTs and the procedures for investigating errors related to EFTs involving prepaid accounts. See generally the section-by-section analysis of § 1005.18(e) below.

Relatedly, current 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. Current 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 credit plans or credit card accounts.

Existing 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 Regulations E and Z apply when credit is extended incident to an EFT. Specifically, current § 1005.12(a)(1)(iv) provides that EFTA and Regulation E govern a consumer's liability for an unauthorized EFT 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 existing § 1005.17(a).

Current comment 12(a)–1.i 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 existing Regulation Z § 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the checking account).[333] 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. Current comment 12(a)–1.ii sets forth examples that illustrate these principles.

With respect to limits on consumer liability for unauthorized use, existing § 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 EFT 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.[334] 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 EFT 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.[335] In proposing these rules, the Board stated that the proposed rule would simplify procedures for financial institutions where an EFT results in both a debit to a consumer's account and a credit extension.[336]

For the reasons discussed in more detail in the section by section analysis of Regulation Z § 1026.13(i) below, the Bureau proposed to amend existing § 1005.12(a)(1)(iv) by moving the current language to proposed § 1005.12(a)(1)(iv)(A) and applying it to accounts other than prepaid accounts. The Bureau also proposed to add § 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 EFT 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 EFT when the consumer's prepaid account is overdrawn.

Proposed § 1005.12(a)(1)(iv)(B) that would have applied to credit in connection with a prepaid account was similar but not the same as proposed § 1005.12(a)(1)(iv)(A) that would have applied to accounts other than prepaid accounts. Like proposed § 1005.12(a)(1)(iv)(A), proposed § 1005.12(a)(1)(iv)(B) generally would have applied Regulation E's limits on

[333] Existing Regulation Z § 1026.13(d) sets forth certain requirements that apply until a billing error is resolved. For example, existing Regulation Z § 1026.13(d)(1) 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. Existing Regulation Z § 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.

[334] 15 U.S.C. 1693g(c).

[335] 45 FR 8249, 8266 (Feb. 6, 1980).

[336] 44 FR 25850, 25857 (May 3, 1979).

liability for unauthorized use and error resolution procedures to transactions that are partially funded through an EFT using an access device and partially funded through credit under a plan that is accessed by an access device when the consumer's prepaid account is overdrawn.

However, unlike proposed § 1005.12(a)(1)(iv)(A), proposed § 1005.12(a)(1)(iv)(B) would not have focused 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) would have focused on whether credit is extended under a ''plan'' when the consumer's prepaid account does not have sufficient funds to complete a transaction and the plan is subject to the provisions in Regulation Z subpart B. For example, under the proposal, a credit plan that is accessed by a prepaid card that is a credit card would have been subject to the provisions of subpart B. Under the proposal, a prepaid card would have been a credit card under Regulation Z even if the creditor retains discretion not to pay the credit transactions. Thus, proposed § 1005.12(a)(1)(iv)(B) would have focused on whether credit is extended under an ''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.

The proposal would have added comment 12(a)–5.i to provide that for an account other than a prepaid account where credit is extended incident to an EFT under an agreement to extend overdraft credit between the consumer and the financial institution, Regulation E's liability limitations and error resolution provisions would have applied, 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, credit that is incident to an EFT 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 would have applied, 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). In addition, proposed comment 12(a)–5.i would have provided that 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 would not have been 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. Proposed comment 12(a)–5.i also would have provided that credit incident to an EFT 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 would not have accessed by a credit card and the plan would not have been open-end credit. In this case, Regulation Z § 1026.13(d) and (g) would not have applied.

As discussed above, existing comment 12(a)–1.i provides guidance on how the principles in existing § 1005.12(a)(1)(iv) apply to transactions involving access devices that are credit cards under Regulation Z. The proposal would have moved existing comment 12(a)–1.i to proposed comment 12(a)–5.ii and made revisions to make clear that this guidance applies to prepaid cards that would have been credit cards under the proposal. The proposal also would have made technical revisions to proposed comment 12(a)–5.ii for clarity.

Existing comment 12(a)–1.ii.A through D provide examples of how the principles described in existing comment 12(a)–1.i relate to transactions involving access devices that also function as credit cards under Regulation Z. Specifically, these examples describe different types of transactions that involve a debit card that also is a credit card and discuss whether Regulation E or Regulation Z's liability limitations and error resolution requirements apply to those transactions. The proposal would have moved existing comment 12(a)–1.ii.A through D to proposed comment 12(a)–5.iii.A through D respectively. The proposal also would have revised the examples in proposed comment 12(a)–5.iii.A through D to clarify that these examples relate to a credit card that also is an access device that draws on a consumer's checking account, and would have made technical revisions to clarify the intent of the examples. No substantive changes would have been intended with these revisions. The proposal also would have added proposed comment 12(a)–5.iii.E that would have provided that the same principles in proposed comment 12(a)–5.iii.A through D apply to prepaid cards that would have been credit cards under the proposal.

Comment Received and the Final Rule

The Bureau did not receive any specific comments on this proposal to amend existing § 1005.12(a)(1)(iv) related to applicability of limits on liability for unauthorized use and error resolution provisions under Regulations E and Z.

The Bureau is amending existing § 1005.12(a)(1)(iv) and adding new § 1005.12(a)(2)(iii) to be consistent with new Regulation Z § 1026.61.

For the reasons discussed in more detail in the section-by-section analysis of Regulation Z § 1026.13(i) below, consistent with the proposal, the Bureau is amending existing § 1005.12(a)(1)(iv) by moving the current language to § 1005.12(a)(1)(iv)(A) and applying it to transactions that do not involve prepaid accounts. The Bureau also is adding new § 1005.12(a)(1)(iv)(B) to provide that with respect to transactions that involve a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in new Regulation Z § 1026.61, EFTA and Regulation E govern a consumer's liability for an unauthorized EFT and the investigation of errors involving an extension of credit that is incident to an EFT that occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction. As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new Regulation Z § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new Regulation Z § 1026.61 and a credit card under final Regulation Z § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed below, the final rule also adds new § 1005.12(a)(1)(iv)(C), and (D), and (2)(iii) to provide guidance on whether Regulation E or Regulation Z governs the consumer's liability for unauthorized use and the investigation of errors with respect to transactions made by prepaid cards that are not hybrid prepaid-credit cards as defined in new Regulation Z § 1026.61.

Proposed comment 12(a)–5.i would have provided guidance on the provisions in both proposed § 1005.12(a)(1)(iv)(A) and (B). As discussed in more detail below, the final rule retains the guidance related to credit extended in connection with prepaid accounts in new comment 12(a)–5.i with revisions to be consistent with new Regulation Z § 1026.61. As discussed in more detail below, the final rule moves guidance related to other types of credit from proposed comment 12(a)–5.i to new comment 12(a)–5.ii and revises it to be consistent with new Regulation Z § 1026.61. Consistent with the proposal, the final rule also moves current comment 12(a)–1.i and ii to new comment 12(a)–5.iii and iv and revises this comment to be consistent with new Regulation Z § 1026.61.

Consistent with the proposal, with respect to transactions that involve a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in new Regulation Z § 1026.61, new § 1005.12(a)(1)(iv)(B) does 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. Under the final rule, whether a prepaid card is a hybrid prepaid-credit card does not depend 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, under the final rule, a prepaid card is a credit card under Regulation Z when it is a ''hybrid prepaid-credit card'' as defined in Regulation Z. In particular, new Regulation Z comment 61(a)(1)–1 provides that a prepaid card is a hybrid prepaid-credit card if the prepaid card can access credit from a covered separate credit feature even if, for example: (1) The person that can extend the credit does not agree in writing to extend the credit; (2) the person retains discretion not to extend the credit; or (3) the person does not extend the credit once the consumer has exceeded a certain amount of credit.

Thus, consistent with the proposal, new § 1005.12(a)(1)(iv)(B) focuses on transactions that involve a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in new Regulation Z § 1026.61, where an extension of credit that is incident to an EFT occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction. These are the situations in which Regulations Z and E would overlap with respect to covered separate credit features accessible by hybrid prepaid-credit cards. New § 1005.12(a)(1)(iv)(B) provides that in these circumstances, EFTA and Regulation E generally govern a consumer's liability for an unauthorized EFT and the investigation of errors with respect to these transactions. Regulation Z's provisions related to a consumer's liability for unauthorized transactions and error resolution procedures generally do not apply, except for existing Regulation Z § 1026.13(d) and (g) that apply to the credit portion of the transaction.

New § 1005.12(a)(1)(iv)(B) and new comment 12(a)–5.i and iii through iv are discussed first. New § 1005.12(a)(1)(iv)(C) and (D), and (2)(iii) are discussed second. New § 1005.12(a)(1)(iv)(A) and new comment 12(a)–5.ii are discussed third.

Transactions involving covered separate credit features accessible by hybrid prepaid-credit cards. As discussed above, new § 1005.12(a)(1)(iv)(B) provides that with respect to transactions that involve a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in new Regulation Z § 1026.61, EFTA and Regulation E govern a consumer's liability for an unauthorized EFT and the investigation of errors involving an extension of credit incident to an EFT that occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction.

Proposed comment 12(a)–5.i would have provided guidance on the provisions in both proposed § 1005.12(a)(1)(iv)(A) and (B). In the final rule, the guidance related to credit extended in connection with prepaid accounts is retained in new comment 12(a)–5.i with revisions to be consistent with new Regulation Z § 1026.61. As discussed in more detail below, the final rule moves guidance related to other types of credit from proposed comment 12(a)–5.i to new comment 12(a)–5.ii with revisions.

Under the final rule, new comment 12(a)–5.i provides that with respect to a transaction that involves a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in new Regulation Z § 1026.61, where credit is extended under a covered separate credit feature accessible by a hybrid prepaid-credit card that is incident to an EFT when the hybrid prepaid-credit card accesses both funds in the asset feature of a prepaid account and credit extensions from the credit feature with respect to a particular transaction, Regulation E's liability limitations and error resolution provisions apply to the transaction, in addition to existing Regulation Z § 1026.13(d) and (g) (which apply because of the extension of credit associated with the covered separate credit feature).

As discussed above, existing comment 12(a)–1.i provides guidance on how the principles in existing § 1005.12(a)(1)(iv) apply to transactions involving access devices that are credit cards under Regulation Z. The proposal would have moved existing comment 12(a)–1.i to proposed comment 12(a)–5.ii and made revisions to make clear that this guidance applies to prepaid cards that would have been credit cards under the proposal. The proposal also would have made technical revisions to proposed comment 12(a)–5.ii for clarity; no substantive changes were intended. The final rule moves current comment 12(a)–1.i to new comment 12(a)–5.iii and adopts this comment consistent with the proposal, with additional technical revisions for clarity. New comment 12(a)–5.iii provides guidance on how the principles in final § 1005.12(a)(1)(iv) apply to transactions involving access devices that are credit cards under Regulation Z, including hybrid prepaid-credit cards that access covered separate credit features. New comment 12(a)–5.iii provides that for transactions involving access devices that also function as credit cards under Regulation Z, 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 access funds in 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 accesses funds in an asset account only (with no credit extended), the provisions of Regulation E apply. If the transaction access funds in an asset account but also involves an extension of credit under an overdraft credit feature subject to Regulation Z attached to the account, Regulation E's liability limitations and error resolution provisions apply, in addition to existing Regulation Z § 1026.13(d) and (g) (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 feature that is subject to Regulation Z that is separate from the asset account, both Regulation E and Regulation Z apply.

Existing examples in comment 12(a)–1.ii.A through D provide examples of how the principles in existing comment 12(a)–1.i relate to transactions involving access devices that also function as credit cards under Regulation Z. Specifically, these examples describe different types of transactions that involve a debit card that also is a credit card and discuss whether Regulation E or Regulation Z's liability limitations and error resolution requirements apply to those transactions. The proposal would have moved existing comment 12(a)–1.ii.A through D to proposed comment 12(a)–5.iii.A through D respectively and would have made several revisions as discussed above.

The final rule moves the existing examples from existing comment 12(a)–1.ii.A through D to new comment 12(a)–5.iv.A through D respectively. Consistent with the proposal, the final rule also revises the examples in new comment 12(a)–5.iv.A through D to clarify that these examples relate to a credit card that also is an access device that draws on a consumer's checking account, and makes technical revisions to clarify the intent of the examples. No substantive changes are intended with these revisions. Consistent with the proposal, the final rule also adds new comment 12(a)–5.iv.E that provides that the same principles in new comment 12(a)–5.iv.A through D apply to an access device for a prepaid account that also is a hybrid prepaid-credit card with respect to a covered separate credit feature under Regulation Z § 1026.61. New comment 12(a)–5.iv.E also provides a cross-reference to final Regulation Z § 1026.13(i)(2) and new comment 13(i)–4 that deals with the interaction between Regulations E and Z with respect to billing error resolution for transactions that involve covered separate credit features accessible by hybrid prepaid-credit cards.

Prepaid cards that are not hybrid prepaid-credit cards. As discussed in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new Regulation Z § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new Regulation Z § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new Regulation Z § 1026.61 or a credit card under final Regulation Z § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of Regulation Z § 1026.61(a)(2) and (4) below.

As discussed above, the final rule adds new § 1005.12(a)(1)(iv)(C), (D), and (2)(iii) to provide guidance on whether Regulation E or Regulation Z governs the consumer's liability for unauthorized use and the investigation of errors with respect to transactions made by prepaid cards that are not hybrid prepaid-credit cards as defined in Regulation Z § 1026.61. New § 1005.12(a)(1)(iv)(C) provides that Regulation E governs the consumer's liability for an unauthorized EFT and the investigation of errors with respect to transactions that involves credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in Regulation Z § 1026.61(a)(4). New comment 12(a)–5.i clarifies that § 1005.12(a)(1)(iv)(C) provides that with respect to transactions that involves credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in Regulation Z § 1026.61(a)(4), these transactions are governed solely by the liability limitations and error resolution procedures in Regulation E, and Regulation Z does not apply.

New § 1005.12(a)(1)(iv)(D) provides that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z § 1026.61, Regulation E governs the consumer's liability for an unauthorized EFT and the investigation of errors with respect to transactions that access the prepaid account, as applicable. New § 1005.12(a)(2)(iii) provides that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z § 1026.61, Regulation Z governs the consumer's liability for unauthorized use and the investigation of errors with respect to transactions that access the non-covered separate credit feature, as applicable. New comment 12(a)–5.i clarifies that § 1005.12(a)(1)(iv)(D) and (2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z § 1026.61, a financial institution must comply with Regulation E's liability limitations and error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's liability limitations and error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable.

As discussed above, EFTA section 909(c) provides that EFTA's limits on liability for unauthorized use apply to transactions which involve both an unauthorized EFT 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.[337] The Bureau believes, however, that EFTA section 909(c) does not apply to transactions that access a non-covered separate credit feature. Non-covered separate credit features only include overdraft credit features with respect to prepaid accounts provided by unrelated third-party creditors other than the prepaid account issuer, its affiliates, or its business partners. Thus, a non-covered separate credit feature could not be offered by a financial institution that is offering overdraft on the prepaid account. For purposes of EFTA section 909(c), the Bureau believes extending

[337] 15 U.S.C. 1693g(c).

credit is reasonably interpreted only to apply where the financial institution is itself the creditor, and thus would not encompass a situation where the financial institution who is the prepaid account issuer would be accessing credit, pursuant to an agreement with the consumer, from the consumer's non-covered separate credit feature. Thus, as explained in new comment 12(a)–5.i, new § 1005.12(a)(1)(iv)(D) and (2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z § 1026.61, a financial institution must comply with Regulation E's liability limitations and error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's liability limitations and error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable. See also the section-by-section analysis of Regulation Z § 1026.13(i) below.

Transactions that do not involve prepaid accounts. As discussed above, final § 1005.12(a)(1)(iv)(A) provides that EFTA and Regulation E generally govern a consumer's liability for an unauthorized EFT and the investigation of errors with respect to transactions that (1) do not involve a prepaid account; and (2) involve an extension of credit that is incident to an EFT 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 final § 1005.17(a).

As discussed above, proposed comment 12(a)–5.i would have provided guidance on the provisions in both proposed § 1005.12(a)(1)(iv)(A) and (B). In the final rule, the proposed guidance related to credit extended in connection with prepaid accounts is retained in new comment 12(a)–5.i with revisions. The final rule moves guidance related to other types of credit from proposed comment 12(a)–5.i to new comment 12(a)–5.ii and revises it to be consistent with new Regulation Z § 1026.61.

The final rule adds new comment 12(a)–5.ii to provide guidance with respect to accounts other than prepaid accounts. Specifically, new comment 12(a)–5.ii provides that with respect to an account (other than a prepaid account) where credit is extended incident to an EFT under an agreement to extend overdraft credit between the consumer and the financial institution, Regulation E's liability limitations and error resolution provisions apply to the transaction, in addition to existing Regulation Z § 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account). Access devices that access accounts other than prepaid accounts are credit cards under Regulation Z when there is an agreement by the financial institution to extend credit. *See* final Regulation Z § 1026.2(a)(15)(iv) and existing Regulation Z comments 2(a)(15)–2.i.B and ii.A. As discussed above, new comments 12(a)–5.iii and iv provide guidance on, and examples of, how the principles in final § 1005.12(a)(1)(iv) apply to transactions involving access devices that are credit cards under Regulation Z.

12(b) Preemption of Inconsistent State Laws

The Bureau's Proposal

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.[338] The Bureau stated 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 final determination stated that the determination would also be reflected in the commentary accompanying Regulation E.

The Bureau proposed 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 have stated that the Bureau had determined that a provision in the State law of Tennessee is preempted by the Federal law, effective April 25, 2013. It would have further stated that, 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 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 proposed to make this statement into a standalone comment in proposed comment 12(b)–2 under the heading *Preemption determinations generally.* The Bureau proposed 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 clarity, and to update proposed comments 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 proposed 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.[339]

Comments Received

The Bureau received no comments regarding the proposed revisions to the commentary for § 1005.12(b). The Bureau did, however, receive comments from a consumer group and the office of a State Attorney General urging the Bureau to clarify that this final rule does not preempt stronger State laws with respect to payroll, student, prison, and government benefit accounts and to acknowledge that State laws may require additional disclosures and obligations not required by this final rule. These commenters specifically referenced the Illinois payroll card law, which they stated provides certain employee protections that are not contemplated by this rule, and recommended that the Bureau emphasize that employers may have additional obligations and restrictions under State law.

The Bureau also received a comment from a payment network, urging the Bureau to expressly provide that all State law requirements that are inconsistent with the requirements of the Bureau's final rule governing prepaid accounts are preempted. The commenter stated that inconsistent State requirements would detract from any required Federal disclosures and add costs to prepaid programs that

[338] 78 FR 24386, 24391 (Apr. 25, 2013).

[339] *See* 72 FR 36589 (July 5, 2007).

ultimately will be borne by consumers. The commenter specifically expressed concern regarding State laws governing disclosures of fees or terms because, it said, such laws will frustrate the goals of consistent disclosure and comparison shopping.

The Final Rule

The Bureau is finalizing comments 12(b)–2 and –3 generally as proposed, with several minor modifications for clarity. The Bureau is also finalizing comment 12(b)–4 as proposed, but in lieu of the proposed reference to ''stored value cards,'' the Bureau is using ''general-use prepaid cards'' in final comment 12(b)–4.i for consistency with § 1005.20(a). The Bureau considered the comments discussed above from the consumer group, the office of a State Attorney General, and the payment network, but does not believe that a revision to the regulatory text or commentary is necessary. EFTA section 922 makes clear that it does not preempt State laws except to the extent those laws are inconsistent with EFTA (and then only to the extent of that inconsistency). It further provides that ''[a] State law is not inconsistent with [EFTA] if the protection such law affords any consumer is greater than the protection afforded by [EFTA].'' The Bureau acknowledges that State laws may require additional disclosures and obligations not required by this final rule, and agrees that financial institutions and other persons involved in prepaid account programs, including employers, should be aware of additional obligations and restrictions under State law.

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. 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.[340] 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.[341]

The Bureau proposed 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 proposed to do with respect to payroll card accounts). The Bureau sought general comment on whether it should subsume all requirements for government benefit accounts into § 1005.18, as well. The majority of industry commenters who commented on this issue supported maintaining a separate section for requirements specifically applicable to government benefit accounts, arguing that government benefit accounts had unique legal and functional characteristics that warranted separate treatment. No commenter opposed maintaining a separate section for government benefit cards. After considering the comments and reading no reasons to the contrary, the Bureau is maintaining the government benefit account provisions in a separate section (§ 1005.15) as proposed.

15(a) Government Agency Subject to Regulation

Existing § 1005.15(a)(1) provides, *inter alia,* that a government agency shall comply with all applicable requirements of EFTA and Regulation E, except as provided in § 1005.15. Existing § 1005.15(a)(2), in turn, defines 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 (not including an account for distributing needs-tested benefits in a program established under State or local law or administered by a State or local agency). The Bureau proposed to adjust the final sentence of § 1005.15(a)(1) to reflect that proposed § 1005.15 would include substantive requirements, and not just exceptions to Regulation E requirements. In addition, for ease of reference, the Bureau proposed to define an account under § 1005.15(a)(2) as a ''government benefit account.''

As it stated in the proposal, the Bureau did not intend for the proposed revisions to impact the existing scope of § 1005.15(a). Numerous commenters asked the Bureau to clarify that government benefit accounts would continue to be covered under the existing requirements of Regulation E, rather than under the new requirements applying to prepaid accounts. One industry commenter, for example, argued that the final rule should exempt from coverage all cards used to distribute government benefits, regardless of whether such benefits are needs-tested. Other industry commenters asked the Bureau to exempt cards used to disburse certain types of benefits—for example, child support, unemployment insurance, and workers' compensation benefits. Currently, these commenters noted, the issuers of these cards administer the programs at no cost to the government agency disbursing the benefit, and at little cost to consumers. If saddled with the costs of complying with the various requirements of the proposed rule, they argued, these issuers may increase their fees or stop issuing government benefit cards altogether.

Consumer group commenters, by contrast, advocated that the Bureau expand the scope of the ''government benefit account'' definition to include additional account types, including accounts that are expressly exempted from Regulation E now. A significant number of consumer group commenters argued that the Bureau should clarify that the exemption for needs-tested government benefit programs established or administered under State or local law does not apply to prepaid accounts. According to these commenters, the rationales for the exemption were either outdated or should not apply to prepaid cards. For example, one consumer group commenter noted that the exemption was intended to relieve regulatory burden for State and local governments, whereas the vast majority of government benefit accounts today are administered by financial institutions that are well-equipped to handle Regulation E compliance. Commenters argued additionally that the recipients of needs-tested benefits are, by definition, the neediest of all prepaid consumers, and thus should be entitled to the full protections of the Bureau's final rule governing prepaid accounts.

The Bureau has considered the comments but believes that changes to the scope of the government benefit account definition are not warranted at this time. As discussed above, the Bureau did not intend its proposed changes to the definition of government benefit account to affect the scope of § 1005.15's coverage, nor did it contemplate or seek comment on whether or how it should narrow or expand the scope of the definition in the final rule. The Bureau understands that the existing scope of the definition, which has been in place since 1997, is well-established and forms the basis of

[340] Public Law 104–193, 110 Stat. 2105 (1996).

[341] *See, e.g.,* 62 FR 43467 (Aug. 14, 1997).

current industry, government, and consumer practices, and it is not persuaded that the policy rationales presented by the commenters warrant unsettling the status quo with respect to the scope of coverage for government benefit accounts. The Bureau likewise declines to exempt government benefit accounts from the new requirements of this final rule, as some industry commenters requested. As detailed in the following sections, the Bureau believes that this final rule's revisions to existing government benefit account requirements, such as the requirements for pre-acquisition disclosures and enhanced access to account information, will substantially benefit consumers by providing them with a full, accurate, and timely disclosure of all of their account's terms and fees, and by helping them gain a more complete picture of their account activity. Accordingly, the Bureau is adopting the revisions to § 1005.15(a) as proposed.

15(b) Issuance of Access Devices

The Bureau did not propose to modify § 1005.15(b). Accordingly, the Bureau is finalizing that provision unchanged.

15(c) Pre-Acquisition Disclosure Requirements

The Bureau's Proposal

The Bureau proposed new disclosure requirements for government benefit accounts that would be provided before a consumer acquired a government benefit account. The requirements in proposed § 1005.15(c) would have been in addition to the initial disclosure requirements in existing § 1005.7(b) and corresponded to the requirements in proposed § 1005.18(b) for prepaid accounts generally.[342] EFTA section 905(a) sets forth disclosure requirements for accounts subject to the Act.[343] In addition to these disclosures, the Bureau proposed to use its authority under EFTA sections 904(a) and (c), and 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 § 1005.18(b)(1)(i) below for prepaid accounts, the Bureau believed that adjustment of the timing requirement was 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 would have assisted consumers' understanding of the terms and conditions of their government benefit accounts.

The Bureau proposed new § 1005.15(c) to extend to government benefit accounts the same pre-acquisition disclosure requirements the Bureau proposed for prepaid accounts, as discussed in detail in the section-by-section analysis of § 1005.18(b) below. Specifically, proposed § 1005.15(c)(1) would have stated that before a consumer acquired a government benefit account, a government agency must 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 new comment 10(e)(2)–2)), the Bureau proposed that a notice be provided at the top of the short form disclosure to highlight for consumers that they were not required to accept the government benefit account. As it noted in the proposal, the Bureau believed it was important for consumers to realize they had the option of not accepting a government benefit account before they acquired the account, and that receiving such notice at the top of the short form would help to ensure consumers were aware of this right. To that end, proposed § 1005.15(c)(2) would have stated that before a consumer acquired a government benefit account, the agency must provide a statement pursuant to proposed § 1005.18(b)(2)(i)(A) that the consumer did not have to accept the government benefit account and that the consumer could 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).

Proposed comment 15(c)–1 would have explained that proposed Model Form A–10(a) contained a model form for the pre-acquisition short form disclosure requirements for government benefit accounts pursuant to proposed § 1005.15(c), and that government agencies could use Sample Form A–10(e) to comply with the pre-acquisition long form disclosure requirements of proposed § 1005.15(c)(1). Proposed comment 15(c)–2 would have reiterated that proposed § 1005.18(b)(1)(i) generally required delivery of both the short form and long form disclosures before a consumer acquired a prepaid account, and provided, in comment 15(c)–2.i, an example illustrating when a consumer received disclosures before acquisition of an account for purposes of proposed § 1005.15(c)(1). Proposed comment 15(c)–3 would have explained that the disclosures and notice required by proposed § 1005.15(c)(1) and (2) could be given in the same process or appointment during which the consumer acquired or agreed to acquire a government benefit account. When a consumer received benefits eligibility information and signed up or enrolled to receive benefits during the same process or appointment, a government agency that gave the disclosures and notice required by proposed § 1005.15(c)(1) and (2) before issuing a government benefit account would have complied with the timing requirements of proposed § 1005.15(c).

Comments Received

Several industry and government commenters objected to the wholesale application of the proposed pre-acquisition disclosures to government benefit accounts. Specifically, several trade associations, a program manager for government benefit accounts, and two State government agencies urged the Bureau to exempt government benefit accounts from the proposed disclosure regime altogether, or to exempt them from the requirement to provide the short form disclosure. These commenters argued that the timing requirements proposed by the Bureau were too difficult to implement and unnecessary, since consumers could not in fact shop for alternative government benefit cards. One State government agency commenter argued that the application of the proposal to its program could necessitate revisions to its vendor contracts. In addition, commenters argued that most of the information that would be required by the proposed disclosures is already disclosed to consumers of government benefit accounts in the initial disclosures required by existing § 1005.7(b)(5) or would be disclosed via the proposed long form disclosure. Receiving duplicative information in the short form and long form disclosures, these commenters asserted, would lead to consumer confusion and information overload.

Other industry and government commenters did not object to the general application of the pre-acquisition disclosure requirements to

[342] The Bureau also proposed, 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 in the section-by-section analysis of § 1005.15(f)(1) below. *See also* § 1005.18(f)(1) (finalizing the same requirement for prepaid accounts).

[343] 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).

government benefit accounts, but urged the Bureau to modify the requirements to better suit the government benefit account context. For example, several industry trade associations, a law firm writing on behalf of a coalition of prepaid issuers, a program manager for government benefit card programs, and State government agencies argued that consumers would be confused if they saw certain fees listed on the government benefit account disclosures that did not in fact apply to their government benefit account program. These commenters urged the Bureau to allow agencies and financial institutions to omit such fees rather than disclose them with a corresponding ''N/A'' or ''$0,'' as required under proposed § 1005.18(b)(2)(i) and comment 18(b)(2)(i)–1. Likewise, certain commenters objected to the proposed requirement that the disclosures for government benefit account programs disclose the maximum amount that could be charged for each fee, since such a disclosure would in some cases misinform consumers as to the actual fee charged in connection with their account.

The program manager commenter and a State government agency commenter argued that government benefit accounts should be exempt from the proposed incidence-based fee disclosure requirements. They argued that the calculation required by proposed § 1005.18(b)(2)(i)(B)(*8*) would be too difficult to complete for government benefit accounts, especially since it was unclear whether the calculation must include every distinct program the issuer offers (of which there could be dozens), or only different types of programs. Oftentimes, the commenters noted, issuers offer only one type of program, but that program is customized for individual government agency clients. The commenters argued in addition that government benefit accounts should be exempted from the segregation requirement in proposed § 1005.18(b)(4), so that the short form disclosure accompanying them can include additional information about how consumers can use their accounts with minimal fee charges.

A large number of commenters, including payment networks, issuing banks, program managers, industry trade associations, a member of Congress, and several government agencies, urged the Bureau to revise the language of the notice requirement in proposed § 1005.15(c)(2) to inform a consumer that he or she was not required to accept the government benefit account. They argued that the proposed language was overly negative in tone and would dissuade consumers from choosing prepaid accounts by giving them the impression that prepaid products were unsafe or less preferable than other payment options. A program manager for government benefit accounts and a State government agency also urged the Bureau to remove the requirement that the banner notice for government benefit accounts include a sentence encouraging consumers to ''ask about other ways to get'' their payments. These commenters argued that this language would lead consumers to contact the government agency or their individual caseworkers to get information about the prepaid account program. Such outreach by consumers would place a further burden on already strained resources without aiding consumers, since agencies or caseworkers were unlikely to have the information the consumer is seeking. Consumer group commenters also asked the Bureau to revise the notice language to include information about what alternative payment methods the consumer could choose, arguing that the onus should not be on the consumer to seek out information about what other payment options are available.

The Bureau also received numerous comments, from both industry and consumer groups, regarding the timing requirements of the pre-acquisition disclosures and their application in the government benefit context. As stated above, the Bureau proposed comments 15(c)–2 and –3 to clarify when a consumer enrolling to receive government benefits via a prepaid account received the disclosures in compliance with the timing requirements of § 1005.18(b)(1)(i). An industry trade association, two issuing banks, a program manager for government benefit accounts, and a State government agency, argued that the proposed comments did not provide sufficient clarity. Specifically, they were concerned that proposed comment 15(c)–2.i suggested that ''acquisition'' in the government benefit context meant the consumer's physical acquisition of the card. According to these commenters, entities charged with administering government benefit account programs often distribute inactive government benefit cards to consumers at the same time as they distribute accompanying disclosures and other paperwork. The commenters were concerned that, as proposed, the commentary would disrupt current practices and place additional implementation burdens on government agencies. Further, they argued that the practice of providing consumers with an inactive card does not harm consumers, since consumers do not accrue any fees or undertake any obligations until the card is activated. Instead, the industry and government commenters urged the Bureau to clarify in revised commentary that acquisition for purposes of government benefit accounts was the point at which the consumer agreed or elected to be paid via a government benefit card. One trade association argued instead that the Bureau should define acquisition in this context as the point at which the consumer activates the government benefit account.

Several consumer group commenters agreed that the Bureau should provide greater clarity regarding what it meant to ''acquire'' a government benefit account, but argued that the point of acquisition should be defined as earlier in the enrollment process. Two consumer groups specified further that the disclosures should be provided before the consumer acquired the physical (if un-activated) card.

Finally, an industry trade association and an issuing bank argued that the Bureau should exempt government benefit accounts from the requirement in proposed § 1005.18(b)(2)(i)(B)(*12*) that the short form disclosure include a statement communicating to the consumer that a prepaid account must register with a financial institution or service provider in order for the funds loaded onto it to be protected. As stated in the proposal, the Bureau believed this disclosure was necessary because many consumer protections set forth in the proposal would not have taken effect until the consumer registered the account. The Bureau acknowledged, however, that the disclosure would be less useful for government benefit account recipients, since consumers have to register with the agency in any event in order to receive their benefits. Commenters noted in addition that the notice was not necessary for government benefit accounts because, as discussed in greater detail in the section-by-section analysis of § 1005.18(e)(3) below, government agencies are required to provide error resolution and limited liability protections to government benefit account consumers regardless of whether those consumers have registered their accounts.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the general requirement in § 1005.15(c) that government agencies comply with the pre-acquisition disclosure requirements in final § 1005.18(b), with a number of revisions, as explained below. The Bureau is finalizing this provision

pursuant to its authority under EFTA sections 904(a) and (c), and 905(a), and section 1032(a) of the Dodd-Frank Act. The Bureau believes that extending the disclosure requirements in § 1005.18(b) 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, by assisting consumers' understanding of the terms and conditions of their government benefit accounts.

Largely similar to proposed § 1005.15(c), final § 1005.15(c)(1) states 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 § 1005.18(b). As discussed in more detail below, the Bureau is adopting new § 1005.15(c)(2)(i) and (ii), which largely mirror final § 1005.18(b)(2)(i)(xiv)(A) and (B). Section 1005.15(c)(2)(i) reflects several changes to the proposed requirement to inform consumers that they are not required to accept the government benefit account, while § 1005.15(c)(2)(ii) provides that agencies may include additional information about how consumers can access their government benefit account funds or balance information for free or for a reduced fee. The Bureau is also adopting new § 1005.15(c)(3) to address the form of the pre-acquisition disclosures required for government benefit accounts pursuant to final § 1005.15(c). Second, the Bureau is not finalizing proposed comment 15(c)–1; accordingly, it has renumbered proposed comments 15(c)–2 and –3 as final comments 15(c)–1 and –2, respectively. Third, the Bureau is adopting new comment 15(c)–3. Finally, the Bureau is finalizing certain revisions to those comments to provide further guidance on when a consumer acquires a government benefit account for purposes of the pre-acquisition disclosure requirements.

Although the Bureau understands that government benefit accounts are distinguishable from other prepaid accounts in several material respects, including the way they are distributed and marketed and the fees associated with them, the Bureau declines to exempt government benefit accounts from the general requirement to provide both a short form and long form disclosure before the consumer acquires the account. The Bureau notes that, pursuant to final § 1005.18(h) and as discussed in the section-by-section analysis thereof, agencies are not required to pull and replace prepaid account packaging materials with non-compliant disclosures that were produced in the normal course of business prior to October 1, 2017.

The Bureau continues to believe that consumers who use these accounts will benefit from the ability to review a set of uniform disclosures regarding their accounts. First, the disclosures provide a clear and conspicuous disclosure of consumers' right under § 1005.10(e)(2) to receive their payment in some other form. The Bureau believes that this important disclosure may be less conspicuous, and therefore potentially less effective, if it were disclosed on the long form disclosure, since the long form disclosure contains far more information in a format that is less hierarchical than the short form disclosure. Second, the new disclosures highlight information that, according to the Bureau's consumer testing, was the most important information consumers needed to inform their decision-making with respect to their preferred payment method.[344] Third, although consumers may not be able to shop for alternative government benefit cards, the short form disclosure facilitates comparison shopping between the government benefit card and, for example, the consumer's own prepaid card or a prepaid card sold at retail. With respect to the comments that the pre-acquisition timing requirements would be particularly difficult to implement in the government benefit context, the Bureau notes that the revisions it is making to proposed comment 15(c)–2 (re-numbered as comment 15(c)–1) in the final rule, as discussed below, will provide government agencies and financial institutions with more flexibility to design efficient and practical enrollment procedures that comply with § 1005.15(c).

The Bureau likewise disagrees with industry commenters' suggestion that the statement regarding benefit payment options is negative and implies that government benefit accounts are inferior products, thereby discouraging consumers from using them. As discussed in greater detail in the section-by-section analysis of § 1005.18(b)(2)(xiv) below, the Bureau examined this issue in its post-proposal consumer testing and found that participants did not construe the language negatively, confirming the Bureau's original understanding from the proposal.[345] Nonetheless, the Bureau has decided to include in the final rule an alternative version of the statement language which the Bureau believes would address commenters' concerns. Moreover, unlike the proposed statement, this added alternative has the advantage of providing concrete options to consumers regarding other ways to receive their funds. The Bureau is thus finalizing § 1005.15(c)(2)(i), which mirrors final § 1005.18(b)(2)(xiv)(A), and provides that 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 directing the consumer to ask about other ways to receive their benefit payments from the agency instead of receiving them via the account, using the following clause or a substantially similar clause: ''You do not have to accept this benefits card. Ask about other ways to receive your benefits.'' Alternatively, an agency may provide a statement that the consumer has several options to receive benefit payments, followed by a list of the options available to the consumer, and directing the consumer to indicate which option the consumer chooses using the following clause or a substantially similar clause: ''You have several options to receive your payments: [list of options available to the consumer]; or this benefits card. Tell the benefits office which option you choose.'' Final § 1005.15(c)(2)(i) also provides that this statement must be located above the information required by final § 1005.18(b)(2)(i) through (iv). This statement must appear in a minimum type size of eight points (or 11 pixels) and appear in no larger a type size than what is used for the fee headings required by final § 1005.18(b)(2)(i) through (iv).

To address comments arguing that agencies should be permitted to include additional information on the short form disclosure for government benefit accounts about how consumers can use their accounts with minimal fee charges, the Bureau is adopting new § 1005.15(c)(2)(ii), which states that an agency may, but is not required to, include a statement in one additional line of text in the short form disclosure directing the consumer to a particular location outside the short form disclosure for information on ways the consumer may access government benefit account funds and balance information for free or for a reduced fee. This statement must be located directly below any statements disclosed pursuant to final § 1005.18(b)(3)(i) and (ii), or, if no such statements are disclosed, above the statement required by final § 1005.18(b)(2)(x). This

[344] *See* ICF Report I at 7.

[345] *See* ICF Report II at 16–17 and 27.

statement must appear in the same type size used to disclose variable fee information pursuant to § 1005.18(b)(3)(i) and (ii), or, if none, the same type size used for the information required by § 1005.18(b)(2)(x) through (xiii).

To provide greater clarity and additional guidance on the specific form and formatting requirements that must apply to government benefit account disclosures, the Bureau is moving the reference to Model Form A–10(a) to new § 1005.15(c)(3). New § 1005.15(c)(3) mirrors several form and formatting requirements in final § 1005.18(b). Specifically, it states that when a short form disclosure required by final § 1005.15(c) is provided in writing or electronically, the information required by final § 1005.18(b)(2)(i) through (ix) shall be provided in the form of a table. Except as provided in final § 1005.18(b)(6)(iii)(B), the short form disclosure required by final § 1005.18(b)(2) shall be provided in a form substantially similar to final Model Form A–10(a). Final Sample Form A–10(f) provides an example of the long form disclosure required by final § 1005.18(b)(4) when the agency does not offer multiple service plans.

Because the Bureau has added format requirements for government benefit account disclosures in new § 1005.15(c)(3), proposed comment 15(c)–1 is now superfluous; accordingly, the Bureau is not finalizing that comment. The Bureau has therefore renumbered proposed comments 15(c)–2 and –3 as final comments 15(c)–1 and –2, respectively.

With respect to comments regarding the timing of acquisition requirements in § 1005.15(c), the Bureau agrees that the final rule should provide greater clarity with respect to when a consumer acquires a government benefit account. The Bureau believes that, in providing such clarity, the rule should strike a balance between avoiding significant disruption of current benefit enrollment practices and ensuring that consumers receive the new disclosures early enough in the enrollment process to inform their decision of how to receive their payments, thereby furthering the goals of the compulsory use provision in § 1005.10(e)(2). Accordingly, the Bureau declines to define acquisition as, for example, the point at which the consumer obtains physical possession of a government benefit card, or the point at which a consumer signs an enrollment form, because such a rule could be overly prescriptive and could disrupt current practices and delay benefit disbursement. On the other hand, the Bureau also declines to define acquisition as the point at which a consumer receives his or her first payment on the government benefit card, because it believes that by the time a consumer receives funds via a particular payment method, he or she is less likely to consider alternative options for how to get paid, thereby reducing the value of the pre-acquisition disclosures. Furthermore, the Bureau notes that, pursuant to the compulsory use prohibition in § 1005.10(e)(2), discussed above, consumers cannot be required to receive government benefits by direct deposit to any particular institutions, including a specific prepaid account. In other words, consumers who have the option to receive their government benefits via a government benefit account must be provided with at least one alternative payment method. The Bureau believes that, particularly in such scenarios, the proposed disclosures should be provided in time to help a consumer decide between the alternative payment methods available to him or her.

Accordingly, and in consideration of the comments above, the Bureau is finalizing revisions to proposed comments 15(c)–2 and –3 (re-numbered as comments 15(c)–1 and –2, respectively) to clarify that a consumer acquires a government benefit account when he or she *chooses* to receive benefits via the government benefit account. Specifically, final comment 15(c)–1 has been revised to state that, for purposes of final § 1005.15(c), a consumer is deemed to have received the disclosures required by § 1005.18(b) prior to acquisition when the consumer receives the disclosures before choosing to receive benefits via the government benefit account. The Bureau recognizes that consumers may indicate their choice to be paid via a government benefit card in various ways, including, for example, by signing or filling out an enrollment form or by calling the financial institution to activate the card. The final rule does not specify what actions manifest a consumer's choice regarding how to get paid.

The Bureau is finalizing the first example in comment 15(c)–1.i generally as proposed. The second example in final comment 15(c)–1.i (which as proposed would have stated that the short form and long form disclosures are provided post-acquisition if a consumer receives them after receiving the government benefit card) has been revised to state that if the consumer does not receive the disclosures required by final § 1005.18(b) to review until the time at which the consumer received the first benefit payment deposited into the government benefit account, these disclosures were provided to the consumer post-acquisition, and were not provided in compliance with final § 1005.15(c). Under the final rule, therefore, a government agency can provide the short form and long form disclosures in the same package as the physical prepaid card and still comply with the requirement in final § 1005.15(c) that the forms be provided prior to acquisition. Likewise, a government agency can provide the pre-acquisition disclosures at the same appointment during which the consumer acquires the government benefit account so long as the disclosures are provided before the consumer actually chooses to receive payments via the account.

Final comment 15(c)–2 also reflects certain other technical revisions for clarity and consistency with the above changes. Specifically, this comment states that the disclosures and notice required by final § 1005.15(c) may be given in the same process or appointment during which the consumer receives a government benefit card. When a consumer receives benefits eligibility information and enrolls to receive benefits during the same process or appointment, a government agency that gives the disclosures and notice required by final § 1005.15(c) before the consumer chooses to receive the first benefit payment on the card complies with the timing requirements of final § 1005.15(c).

The Bureau has added new comment 15(c)–3 to provide clarification regarding the form and formatting requirements for government benefit account disclosures. This comment explains that the requirements in § 1005.15(c) correspond to those for payroll card accounts set forth in § 1005.18(b). The comment also cross-references final comments 18(b)(2)(xiv)(A)–1 and 18(b)(2)(xiv)(B)–1 for additional guidance regarding the requirements set forth in final § 1005.15(c)(2)(i) and (ii), respectively. The Bureau has also added new comment 15(c)–4 to clarify the application of the requirement in § 1005.18(b)(5) that the name of the financial institution be disclosed outside the short form disclosure for government benefit accounts. Pursuant to new comment 15(c)–4, the financial institution whose name must be disclosed pursuant to the requirement in § 1005.18(b)(5) is the financial institution that directly holds the account or issues the account's access device. Also pursuant to comment 15(c)–4, the disclosure provided outside the short form may, but is not required

to, include the name of the government agency that established the government benefit account.

Finally, the Bureau agrees with commenters that the notice regarding registration of the prepaid account that would have been required by proposed § 1005.18(b)(2)(i)(B)(*12*) is likely not necessary for government benefit accounts, as the registration process is typically completed before the account is opened. As discussed in the section-by-section analysis of § 1005.18(b)(2)(xi) below, the final rule does not require the statement regarding registration where customer identification and verification occurs for all prepaid accounts within the prepaid program before the account is opened.

15(d) Access to Account Information

15(d)(1) Periodic Statement Alternative

The Bureau's Proposal

Section 1005.9(b), which implements EFTA section 906(c), generally requires a periodic statement for each monthly cycle in which an EFT occurred or, if there are no such transfers, a periodic statement at least quarterly.[346] 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 EFT); 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 proposed to revise existing § 1005.15(c), renumbered as § 1005.15(d)(1), which would have allowed 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. The Bureau believed that, 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), it was 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 § 1005.18(c)(1) below.

Proposed § 1005.15(d)(1) and (1)(i) would have stated that a government agency need not furnish periodic statements required by § 1005.9(b) if the agency made 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 EFT). This language was 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, did not include the requirement to provide balance information at a terminal. As discussed in the section-by-section analysis of § 1005.18(c)(1)(i) below, the Bureau sought 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, or whether, alternatively, the requirement should be eliminated from § 1005.15 given the other proposed enhancements and for parity with proposed § 1005.18.

Second, proposed § 1005.15(d)(1)(ii) would have required government agencies to provide an electronic history of the consumer's account transactions, such as through a Web site, that covered at least 18 months preceding the date the consumer electronically accessed the account. As noted above, the requirement to provide an electronic history of a consumer's account transactions was new for government benefit accounts. The Bureau did not believe that the proposed requirement would have imposed significant burden on government agencies, as the Bureau believed that many government benefit account programs already provided electronic access to account information.

Third, proposed § 1005.15(d)(1)(iii) would have required government agencies to provide a written history of the consumer's account transactions promptly in response to an oral or written request and that covered at least 18 months preceding the date the agency received the consumer's request. This provision was similar to existing § 1005.15(c)(2), but was 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.

Comments Received

A consumer group commenter supported the Bureau's decision to apply the requirement to provide consumers access to a longer account history period to government agencies. A think tank commenter, on the other hand, objected to the decision, arguing that it would be difficult for government agencies to manage beneficiaries' account histories for 18 months. In addition, an industry trade association and an issuing bank opposed the Bureau's decision to maintain the requirement that government agencies wishing to take advantage of the periodic statement alternative provide consumers' account balance information at a terminal, arguing that terminal access was outdated and has been replaced by text or online account access. Two consumer groups, by contrast, supported the continued requirement for balance information at a terminal for government benefit accounts and urged the Bureau to expand the requirement to all prepaid accounts. They argued that ATMs are easy to use and that all consumers have access to ATM terminals, while not all consumers may have access to online account information.

The Final Rule

For the reasons set forth herein, the Bureau is adopting § 1005.15(d)(1) and comment 15(d)–1 largely as proposed, with minor revisions for consistency with final § 1005.18(c). 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. As discussed in the section-by-section analysis of § 1005.18(c)(1) below, the Bureau has modified proposed § 1005.18(c)(1) to require 12 months of electronic account transaction history and 24 months of

[346] 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).

written account transaction history instead of 18 months for both as proposed. The Bureau has therefore modified § 1005.15(d)(1) accordingly. The Bureau believes that this revision strikes the appropriate balance between the burden imposed on industry overall while, in conjunction with final § 1005.18(c)(1)(iii) discussed below, ensuring that additional transaction history will be available for consumers who need it. Final comment 15(d)–1 cross-references final comments 18(c)–1 through –3 and –5 through –9 for further guidance on the access to account information requirements.

In response to the comment that the proposed 18-month access to account information requirements should not be extended to government benefit accounts, the Bureau is not convinced that there is a significant difference between the burden these requirements place on prepaid account issuers as financial institutions and the burden they place on government agencies, since, as the Bureau noted in the proposal, government benefit account programs are typically administered by financial institutions pursuant to a contract between the institution and the agency.[347] With respect to the requirement that government agencies continue to provide account balances at terminal locations, the Bureau has considered the comments and is adopting § 1005.15(d)(1)(i) as proposed. The requirement is unchanged from existing § 1005.15(c)(1); recipients of government benefits may have come to rely on the ATM as a source of account information, and the Bureau does not see a need to remove this provision from the final rule. Relatedly, the Bureau notes that ATMs are still in wide use by consumers of various financial services products, and as such, it disagrees with commenters who argued that ATMs are an obsolete method of providing balance information to consumers. Furthermore, the Bureau understands that recipients of government benefits may be among the neediest consumers of prepaid accounts, and as such, may be less likely to have access to a mobile phone when they need it, such as prior to withdrawing money at the ATM. Having access to their balance at an ATM could help consumers in this scenario avoid costly fees. Finally, the Bureau notes that government agencies and financial institutions remain free under the final rule to recommend or encourage consumers to use particular modes of accessing their account balances.

15(d)(2) Additional Access to Account Information Requirements

The Bureau proposed § 1005.15(d)(2), which would have required that a government agency comply with the account information requirements as set forth in proposed § 1005.18(c)(2), (3), and (4). As discussed in more detail below, proposed § 1005.18(c)(2) would have required that the electronic and written histories in the periodic statement alternative 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 have required 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 have required 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 have referred to proposed comments 18(c)–1 through –5 for guidance on access to account information requirements.

The Bureau did not receive any comments specifically addressing § 1005.15(d)(2)'s application of the account information requirements in § 1005.18(c)(2) through (4) to government benefit accounts. Accordingly, the Bureau is finalizing § 1005.15(d)(2) as proposed with revised cross-references to reflect changes in the numbering of provisions within final § 1005.18(c). 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 that 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 summary totals of both monthly and annual fees. The Bureau believes that these 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 section 1032(a) of the Dodd-Frank Act because it believes that disclosure of all fees and account activity summaries will 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.

The Bureau notes, however, that it is finalizing certain revisions to proposed § 1005.18(c)(2) through (4), renumbered as final § 1005.18(c)(3) through (5). Most significantly, the Bureau has removed the requirement that financial institutions provide summary totals of all deposits to and debits from a consumer's prepaid account from the final rule. The specific revisions and their respective rationales are discussed in the section-by-section analyses of § 1005.18(c)(3) through (5) below.

15(e) Modified Disclosure, Limitations on Liability, and Error Resolution Requirements

Because the Bureau proposed to modify the periodic statement alternative for government benefit accounts in proposed § 1005.15(d)(1), the Bureau proposed to modify the requirements in existing § 1005.15(d), renumbered as § 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. For the reasons set forth below, the Bureau is finalizing the various provisions of § 1005.15(e) as proposed. As specified in final § 1005.15(e), these requirements apply to government agencies that provide access to account information under the periodic statement alternative in final § 1005.15(d)(1). The Bureau has also revised the heading for final § 1005.15(e) to reflect that the section contains modified requirements regarding limitations on liability and error resolution, as well as disclosures.

15(e)(1) Initial Disclosures

15(e)(1)(i) Access to Account Information

Proposed § 1005.15(e)(1)(i) would have required a government agency to modify the disclosures required under § 1005.7(b) by disclosing a telephone number that the consumer could call to obtain the account balance, the means by which the consumer could 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

[347] 79 FR 77102, 77141 (Dec. 23, 2014). As it noted in the proposal, the Bureau has found that all the government benefit card programs included in its Study of Prepaid Account Agreements already provide online access to account information (*see* Study of Prepaid Account Agreements at 18 tbl.5), and, in most cases, electronic periodic statements as well (*see id.* at 20 tbl.7).

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) could have been made by providing a notice substantially similar to the notice contained in proposed appendix A–5. The Bureau did not receive any comments in response to this portion of the proposal. As such, it is finalizing § 1005.15(e)(1)(i) as proposed.

15(e)(1)(ii) Error Resolution

Mirroring existing § 1005.15(d)(1)(iii), proposed § 1005.15(e)(1)(ii) would have required a government agency to modify the disclosures required under § 1005.7(b) by providing a notice concerning error resolution that was substantially similar to the notice contained in proposed appendix A–5, in place of the notice required by § 1005.7(b)(10). Those proposed modifications are discussed below in the section-by-section analysis of appendix A–5. The Bureau did not receive any comments on proposed § 1005.15(e)(1)(ii); accordingly, the Bureau is adopting § 1005.15(e)(1)(ii) as proposed.

15(e)(2) Annual Error Resolution Notice

Mirroring existing § 1005.15(d)(2), proposed § 1005.15(e)(2) would have required that an agency provide an annual notice concerning error resolution that was substantially similar to the notice contained in proposed appendix A–5, in place of the notice required by § 1005.8(b). The Bureau proposed to add that, alternatively, the agency could 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 proposed 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. The Bureau sought comment, however, on whether to continue to require annual error resolution notices for government benefit accounts in certain circumstances, such as when a consumer has not accessed an electronic history or requested a written history in an entire calendar year.

One consumer group commenter urged the Bureau to maintain the requirement that government agencies send annual error resolution notices in connection with government benefit accounts in all instances, regardless of whether the consumer had recently accessed the account. Several industry commenters, including a program manager, an issuing bank, and a trade association, supported the Bureau's decision to allow government agencies to provide an abbreviated error resolution notice on each electronic or written history in lieu of the annual notice. These commenters argued that providing an annual notice is costly, that many such notices get returned to the sender without being opened, and that consumers with dormant accounts who receive these notices may be confused and led to believe that their government benefits were being affected in some way.

The Bureau has considered the above comments. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users and pursuant to its authority under EFTA section 904(c) to adopt an adjustment to the error resolution notice requirement of EFTA section 905(a)(7), the Bureau is finalizing the annual error resolution notice requirement in § 1005.15(e)(2) as proposed. As stated in the section-by-section analysis of § 1005.18(d) below, the Bureau continues to believe that its regime for error resolution notices strikes an appropriate balance by providing consumers with enough information to know about and exercise their rights without overwhelming them with more information than they can process or put to use.

15(e)(3) Modified Limitations on Liability Requirements

For accounts under Regulation E generally, § 1005.6(a) provides that a consumer may be held liable for an unauthorized EFT 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.[348] 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.[349] 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.[350] Section 1005.6(b)(3) provides, in part, that a consumer must report an unauthorized EFT 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), 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). Proposed § 1005.15(e)(3) would have modified 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 have provided that for purposes of existing § 1005.6(b)(3), the 60-day period for reporting any unauthorized transfer began on the earlier of the date the consumer electronically accessed the consumer's account under proposed § 1005.15(d)(1)(ii), provided that the electronic history made available to the consumer reflected the unauthorized transfer, or the date the agency sent 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 was first reflected.

Proposed § 1005.15(e)(3)(ii), which mirrored existing § 1005.18(c)(3)(ii) and proposed § 1005.18(e)(1)(ii), would have provided that an agency could 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 did not receive any comments on this portion of the proposal. To further the purposes of

[348] 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 EFTs; 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).

[349] § 1005.6(b)(1).

[350] § 1005.6(b)(2).

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 under EFTA 904(c) to modify the timing requirements of EFTA 909(a). As such, it is finalizing § 1005.15(e)(3)(i) and (ii) as proposed. The Bureau did receive comments on § 1005.18(e)(1)(ii), which are discussed in the section-by-section analysis of that provision below. The Bureau notes that nothing in this final rule 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

Section 1005.11(c)(1) and (3)(i) requires that a financial institution, after receiving notice that a consumer believes an EFT 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 10 business days (20 business days if the EFT 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.[351] 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 10 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 10 business days of receiving the error notice.[352] 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.[353] 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).[354]

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 noted in the proposal that this provision only modified the 60-day period for consumers to report an error and did not alter any other provision of § 1005.11.

Proposed § 1005.15(e)(4) would have modified 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 have provided 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 accessed the consumer's account under proposed § 1005.15(d)(1)(ii), provided that the electronic history made available to the consumer reflected the alleged error, or 60 days after the date the agency sent a written history of the consumer's account transactions requested by the consumer under proposed § 1005.15(d)(1)(iii) in which the alleged error was first reflected.

Proposed § 1005.15(e)(4)(ii) would have provide that in lieu of following the procedures in proposed § 1005.15(e)(4)(i), an agency complied with the requirements for resolving errors in existing § 1005.11 if it investigated any oral or written notice of an error from the consumer that was 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 have cross-referenced proposed comments 18(d)–1 through –3 for guidance on modified limited liability and error resolution requirements.

The Bureau did not receive any comments with respect to proposed § 1005.15(e)(4) or comment 15(e)–1. Accordingly, it is finalizing those provisions as proposed. The Bureau is finalizing the proposed provisions 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, and because it 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).

As explained in greater detail in the section-by-section analysis of § 1005.18(e) below, the Bureau has revised its proposed error resolution requirements for prepaid accounts generally in several key respects in the final rule. Specifically, under the final rule, financial institutions that have not completed their consumer identification and verification process with respect to a particular account will still have to investigate and resolve errors reported with respect to that account. However, pursuant to new § 1005.18(e)(3), financial institutions that have not completed the consumer identification and verification process, that completed the process but were not able to verify the account holder's identity, or that do not have a process by which consumers can register their accounts, can take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (3)(ii), as applicable, to investigate and resolve the error without having to provisionally credit the consumer's account, as required by § 1005.11(c)(2).

The exclusion set forth in final § 1005.18(e)(3) from certain aspects of existing § 1005.11(c)(2) does not apply to government benefit accounts. This is to retain the current application of these rules to government benefit accounts. As the Bureau explained in the proposal, the Bureau understands that the consumer identifying information associated with a government benefit account is collected and verified by the government agency, another financial institution, or a service provider prior to the account's distribution. Therefore, under the final rule, and as discussed in greater detail in the section-by-section analysis of § 1005.18(e)(3) below, government agencies and other financial institutions must provide full error resolution protections for government benefit accounts, including provisional credit for accounts when investigations of errors take longer than 10 business days, regardless of whether the

[351] *See* § 1005.11(c)(1).

[352] 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)(ii).

[353] *See* § 1005.11(c)(2)(i)(A).

[354] *See* § 1005.11(d)(2).

government benefit account had been registered or the consumer's identity had been verified.

15(f) Initial Disclosure of Fees and Other Information

The Bureau proposed § 1005.15(f) to provide that for government benefit accounts, a government agency would have to 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). EFTA section 905(a)(4), as implemented by existing § 1005.7(b)(5), requires financial institutions to disclose to consumers, as part of an account's terms and conditions, any charges for EFTs or for the right to make such transfers. The Bureau believed that for prepaid accounts (including government benefit accounts), it was important that the initial account disclosures provided to consumers listed all fees that may be imposed in connection with the account, not just those fees related to EFTs.

Specifically, the Bureau proposed § 1005.15(f), which would have cross-referenced proposed § 1005.18(f) to require that, in addition to disclosing any fees imposed by a government agency for EFTs or the right to make such transfers, the agency would have also had to 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 would have had to disclose the amount of the fee, the conditions, if any, under which the fee may have been imposed, waived, or reduced, and, to the extent known, whether any third-party fees would have been applied. These disclosures pursuant to proposed §§ 1005.15(f) and 1005.18(f) would have had to include all of the information required to be disclosed pursuant to proposed § 1005.18(b)(2)(ii)(B) and would have needed to be provided in a form substantially similar to proposed Sample Form A–10(e). Further, for consistency purposes and to facilitate consumer understanding of a government benefit account's terms, the fee disclosure provided pursuant to § 1005.7(b)(5), as modified by proposed § 1005.18(f), would have to be in the same format of the long form disclosure requirement of proposed § 1005.18(b)(2)(ii)(A).

The Bureau did not receive any comments regarding this portion of the proposal. 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 finalize an adjustment of the requirement implemented in existing § 1005.7(b)(5) for government benefit accounts. Accordingly, it is adopting § 1005.15(f) largely as proposed to cross-reference the requirements set forth in final § 1005.18(f), with revisions for parity with the final text of § 1005.18(f).

The Bureau notes that it is also finalizing certain revisions to proposed § 1005.18(f). The specific revisions and their respective rationales are discussed in detail the section-by-section analyses of § 1005.18(f) and (f)(3) below. In summary, the Bureau has revised proposed § 1005.18(f), renumbered as § 1005.18(f)(1), to require that a financial institution include, as part of the initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed in its pre-acquisition long form disclosure pursuant to final § 1005.18(b). The Bureau has added new § 1005.18(f)(2) to make clear that a financial institution must provide a change-in-terms notice, pursuant to § 1005.8(a), for any change in a term or condition required to be disclosed under §§ 1005.7 or 1005.18(f)(1). Finally, § 1005.18(f)(3) sets forth the required disclosures that must appear on prepaid account access devices (in the proposal, these requirements would have been set forth in proposed § 1005.18(b)(7)). To clarify the application of the requirement in § 1005.18(f)(3) that the name, Web site URL, and telephone number of the financial institution be disclosed on the prepaid account access device to government benefit accounts, the Bureau is adding new comment 15(f)–1. Pursuant to new comment 15(f)–1, the financial institution whose name must be disclosed pursuant to the requirement in § 1005.18(f)(3) is the financial institution that directly holds the account or issues the account's access device.

15(g) Government Benefit Accounts Accessible by Hybrid Prepaid-Credit Cards

The Bureau proposed § 1005.15(g), which would have required that for credit plans linked to government benefit accounts, a government agency would have to comply with prohibitions and requirements applicable to prepaid accounts as set forth in proposed § 1005.18(g). The Bureau did not receive any comments regarding this portion of the proposal, and is finalizing § 1005.15(g) largely as proposed with minor modifications to incorporate the term hybrid prepaid-credit card that this final rule is adopting under new Regulation Z § 1026.61. The Bureau has made changes, however, to certain of the underlying requirements in proposed § 1005.18(g). See the section-by-section analysis of § 1005.18(g) below for additional information on those requirements.

Section 1005.17 Requirements for Overdraft Services

17(a) Definition

The Bureau's Proposal

Existing § 1005.17 sets forth requirements that financial institutions must follow in order to provide an ''overdraft service'' to consumers related to consumers' accounts. Under existing § 1005.17, financial institutions must provide consumers with a notice describing 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.

Existing § 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. Existing § 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 existing Regulation Z § 1026.3(d). In adopting the provisions in what is now existing § 1005.17, the Board indicated that these methods of covering overdrafts were excluded because they require the express agreement of the consumer.[355]

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, in the proposal, the Bureau declined to extend the current regulatory scheme governing overdraft services on checking accounts to prepaid accounts, and instead proposed to regulate these types of services generally under Regulation Z (as well as

[355] 74 FR 59033, 59040 (Nov. 17, 2009).

Regulation E's compulsory use provision). The proposal would have amended existing § 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 have amended existing § 1005.17(a)(1) to provide that the term ''overdraft service'' 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,'' under proposed Regulation Z § 1026.12(a)(1) and proposed comment 12(a)(1)–7, credit card plans in connection with prepaid accounts would have required the express agreement of consumers in that, under the proposal, such plans could be added to previously issued prepaid accounts only upon a consumer's application or request. In addition, under proposed § 1005.18(g)(1) and proposed Regulation Z § 1026.12(h), a credit card account could not have been added to a previously issued prepaid account until 30 days after the prepaid account has been registered.

In the proposal, the Bureau also noted that the opt-in provision in existing § 1005.17 would not have applied to credit accessed by a prepaid card that would not have been a credit card under the proposal because the card could have only accessed 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. Specifically, existing § 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 existing § 1005.17) that access an institution's overdraft service would have been considered ''finance charges'' under the proposal. Thus, under the proposal, 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 existing § 1005.17) for accessing the overdraft service, such that the opt-in provision in existing § 1005.17 would apply. Under the proposal, if a prepaid card were charging any fees or charges for ATM or one-time ''debit card'' transactions (as that term is used in existing § 1005.17) that accessed the overdraft service, the prepaid card would have been a credit card under Regulation Z. In that case, the prepaid card would not have been subject to the opt-in requirement in existing § 1005.17, but would be subject to provisions of Regulation Z, as discussed above.

Comments Received and the Final Rule

The Bureau did not receive specific comment on the proposed changes to existing § 1005.17(a)(1), other than those related to general comments from industry not to cover overdraft plans offered on prepaid accounts under Regulation Z and instead cover these overdraft plans under Regulation E § 1005.17. See the *Overview of the Final Rule's Amendments to Regulation Z* section for a discussion of those comments.

As discussed in more detail below, the final rule moves the language in proposed § 1005.17(a)(1) that specifically would have provided that credit plans accessed by prepaid cards that are credit cards are exempt from the definition of ''overdraft service'' to new § 1005.17(a)(4) and revises it to be consistent with new Regulation Z § 1026.61. New § 1005.17(a)(4) provides that a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61 is not a ''overdraft service'' under final § 1005.17(a).

In addition, as discussed in more detail below, consistent with the proposal, new § 1005.17(a)(4) also provides that credit extended through a negative balance on the asset feature of a prepaid account that meets the conditions of new Regulation Z § 1026.61(a)(4) is not an ''overdraft service'' under final § 1005.17(a). As discussed below, a prepaid card that accesses such credit is not a hybrid prepaid-credit card under new Regulation Z § 1026.61.

Covered separate credit features accessible by a hybrid prepaid-credit card. Consistent with the proposal, the opt-in provisions in final § 1005.17 will not apply to the payment of overdrafts pursuant to a credit feature that is accessible by a prepaid card that is a credit card. The final rule moves the language in proposed § 1005.17(a)(1) that specifically would have provided that credit plans accessed by prepaid cards that are credit cards are exempt from the definition of ''overdraft service'' to new § 1005.17(a)(4) and revises it to be consistent with new Regulation Z § 1026.61. New § 1005.17(a)(4) provides that a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61 is not a ''overdraft service'' under final § 1005.17(a). This exception is consistent with existing § 1005.17(a)(1) which exempts from the term ''overdraft service'' under existing § 1005.17(a) any payment of overdrafts pursuant to a line of credit subject to Regulation Z § 1026, including transfers from a credit card account, home equity line of credit, or overdraft line of credit. As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in Regulation Z § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new Regulation Z § 1026.61 and a credit card under final Regulation Z § 1026.2(a)(15)(i) with respect to the covered separate credit feature. Thus, a covered separate credit feature accessible by a hybrid prepaid-credit card is a credit card account subject to Regulation Z.

Credit features on prepaid accounts not accessible by a hybrid prepaid-credit card. As discussed above, in the proposal, the Bureau also noted that the opt-in provision in existing § 1005.17 would not have applied to credit accessed by a prepaid card that would not have been a credit card under the proposal because the 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), and is not payable by written agreement in more than four installments.

As discussed in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new Regulation Z § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new Regulation Z § 1026.61(a)(4), a prepaid card also is not a hybrid

prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new Regulation Z § 1026.61 or a credit card under final Regulation Z § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of Regulation Z § 1026.61(a)(2) and (4) below.

Consistent with the proposal, the Bureau is adding new § 1005.17(a)(4) to provide that the term ''overdraft service'' does not include any payment of overdrafts pursuant to credit extended through a negative balance on the asset feature of a prepaid account that meets the conditions set forth in new Regulation Z § 1026.61(a)(4). As discussed above, a prepaid card would not be a hybrid prepaid-card when it accesses this credit. With respect to such an overdraft credit that meets the conditions for the exception in new Regulation Z § 1026.61(a)(4), a prepaid account issuer could still qualify for this exemption if the issuer is charging a per transaction fee for paying a transaction on the prepaid account, so long as the amount of the per transaction fee is not higher based on whether the transaction only accesses asset funds in the prepaid account or also accesses credit. For example, assume a $1.50 transaction charge is imposed on the prepaid account for each paid transaction that is made with the prepaid card, including transactions that only access asset funds, transactions that take the account balance negative, and transactions that occur when the account balance is already negative. A prepaid account issuer could still qualify for the exception under new Regulation Z § 1026.61(a)(4) even if it was charging this $1.50 transaction fee, so long as the prepaid account issuer meets the conditions of new Regulation Z § 1026.61(a)(4).

The Bureau is adding new § 1005.17(a)(4) to provide that credit which is exempt from Regulation Z under new Regulation Z § 1026.61(a)(4) is not an overdraft service under final § 1005.17(a) and thus would not be subject to the opt-in requirements in final § 1005.17. This is true even though the prepaid account issuer may be charging a per transaction fee as described above on the prepaid account, including for transactions that access incidental credit as described above. The Bureau believes that the opt-in requirements in final § 1005.17 are not necessary for this types of overdraft credit given that the per transaction fee is the same amount regardless of whether the transaction is only accessing funds in the prepaid account or is also accessing credit.

The Bureau notes that a prepaid account issuer does not satisfy the exception in new Regulation Z § 1026.61(a)(4) from the definition of ''hybrid prepaid-credit card'' if it charges on a prepaid account transaction fees for credit extensions on the prepaid account where the amount of the fee is higher based on whether the transaction accesses asset funds in the prepaid account or accesses credit. For example, assume a $15 transaction charge is imposed on the prepaid account each time a transaction is authorized or paid when there are insufficient or unavailable funds in the asset balance of the prepaid account at the time of the authorization or settlement. Also assume, a $1.50 fee is imposed each time a transaction on the prepaid account only accesses funds in the asset balance of the prepaid account. The $15 charge would disqualify the prepaid account issuer for the exception under new Regulation Z § 1026.61(a)(4) and the prepaid card would be a ''hybrid prepaid-credit card'' with respect to that prepaid account. In that case, the prepaid account issuer still would not be subject to final § 1005.17, but would be subject to Regulation Z. In that case, under final Regulation Z § 1026.61(b), the credit feature accessible by a hybrid prepaid-credit card must be structured as a ''covered separate credit feature'' as discussed above.

While overdraft credit described in new Regulation Z § 1026.61(a)(4) is exempt from final § 1005.17, this incidental credit generally is covered under Regulation E. For example, as discussed in more detail in the section-by-section analysis of § 1005.12(a) above, Regulation E's provisions in final §§ 1005.11 and 1005.18(e) regarding error resolution would apply to extensions of this credit. In addition, such credit extensions would be disclosed on Regulation E periodic statements under final § 1005.18(c)(1) or, if the financial institution follows the periodic statement alternative in final § 1005.18(c)(1), on the electronic and written histories of the consumer's prepaid account transactions. This overdraft credit, however, is exempt from the compulsory use provision in final § 1005.10(e)(1). See the section-by-section analysis of § 1005.10(e)(1) above.

Non-covered separate credit features that are functioning as an overdraft credit features with respect to prepaid accounts also typically will not be subject to final § 1005.17 because these credit features typically will be lines of credit that are subject to Regulation Z, which are expressly exempt from the definition of ''overdraft service'' under final § 1005.17(a)(1).

Section 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

Currently, § 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 proposed to revise § 1005.18 by replacing it with provisions governing prepaid accounts, which the Bureau proposed to apply to payroll card accounts as well. Each of the provisions of § 1005.18 is discussed in turn below.

Regarding the Bureau's proposed approach to § 1005.18, several commenters, including industry trade associations, program managers, and issuing banks, argued that payroll card accounts should not be treated the same as other prepaid accounts, because they are already heavily regulated by State laws, and, unlike prepaid accounts sold at retail, are not distributed or marketed to the general public. These commenters thus urged the Bureau to finalize the provisions related to payroll card accounts specifically in a separate section, rather than to subsume those provisions into proposed § 1005.18. They argued that maintaining two separate sections would ease compliance and provide regulatory clarity and certainty for issuers and employers. One issuing bank, however, took the opposite position, arguing that there was no reason to treat payroll card accounts distinctly from other prepaid accounts.

As discussed in more detail in the *Overview of the Bureau's Approach to Regulation E* section and the section-by-section analysis of § 1005.2(b)(3)(i)(A) above, the Bureau believes that there is substantial value to both consumers and financial institutions in promoting consistent treatment across products. In addition, the Bureau believes that, to the extent many GPR cards already comply with existing regulations for payroll card accounts, financial institutions already treat payroll card accounts and GPR cards similarly. Similarly, the Bureau believes that maintaining the current numbering system that financial institutions already complying with Regulation E have come to rely on—*i.e.,* keeping provisions related to government benefit accounts in

§ 1005.15 and provisions related to payroll card accounts in § 1005.18—will enhance compliance by preventing unnecessary confusion. Thus, although there are several provisions in final § 1005.18 that distinguish payroll card accounts (and government benefit accounts) from other types of prepaid accounts, the Bureau believes it is appropriate to subsume the requirements for payroll card accounts into the requirements for prepaid accounts generally in final § 1005.18. The Bureau is finalizing § 1005.15 separately for government benefit accounts, however, because of the unique complexities surrounding who constitutes a financial institution for purposes of that section (and Regulation E generally) with respect to government benefit accounts.

18(a) Coverage

The Bureau proposed 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 have also referred 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 proposed 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 have explained that a consumer was deemed to request an access device for a prepaid account when, for example, the consumer acquired a prepaid account offered for sale at a retail store or acquired a prepaid account by making a request or submitting an application by telephone or online. The Bureau also proposed 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 the proposal would have left current comment 18(a)–2 unchanged.

One program manager commenter asked the Bureau to clarify in existing comment 18(a)–1 that the distribution of an un-activated payroll card to a new employee did not constitute unsolicited issuance of a payroll card account. A number of other industry commenters, including a trade association and two issuing banks, requested that the Bureau make the same clarification with respect to other account types, including disaster relief cards and student ID cards that also function as prepaid accounts. With respect to the first comment, the Bureau did not intend the proposal to alter the application of § 1005.5 to payroll card accounts, nor is this final rule making such a change. As such, the Bureau declines to revise comment 18(a)–1 in the final rule to change the existing guidance with respect to when a consumer solicits a payroll card account.

With respect to the request for similar clarification regarding other types of cards, the Bureau does not believe that such a clarification is warranted.[356] The Bureau understands from the comments received that most issuers of student prepaid accounts already comply with most, if not all, of the requirements of existing § 1005.5(b) with respect to such cards. Specifically, the Bureau understands that, when students receive access devices they did not specifically request, the devices are inactive and need to be validated before they can be used to access a prepaid account; further, the Bureau understands the devices already come accompanied by most, if not all, of the disclosures required by § 1005.7. The Bureau believes that the remaining requirements of § 1005.5(b)—that the access devices be accompanied by an explanation that it is not validated, as well as an explanation of how the consumer may dispose of the card—should not place an additional ongoing burden on issuers of student prepaid accounts.[357] At the same time, the Bureau is aware of reports of students incurring ''confusing'' or ''unreasonably high fees'' for using their student cards.[358] The Bureau believes that, consistent with § 1005.5(b), students who receive ID cards with a prepaid functionality they did not request should know that they are receiving a financial product, and should be aware that they have the right to decline that product's functionality if they so wish.

In sum, the Bureau believes there are significant consumer protection benefits in requiring student ID cards with prepaid functionality to comply with the unsolicited issuance provisions in § 1005.5(b), even in light of any the potential burden to industry. The Bureau therefore declines to add an exception to the unsolicited issuance provisions in § 1005.5(b) for student ID cards, and, likewise, is not adopting any additional guidance with respect to when a student ID card is distributed on an unsolicited basis in § 1005.18. Accordingly, student ID cards with prepaid functionality that are distributed without a consumer's request, and not as a renewal or substitution for an existing access device, are unsolicited and must comply with the requirements of § 1005.5(b).

The Bureau did not receive any additional comments on its proposed revisions to § 1005.18(a). Accordingly, the Bureau is adopting § 1005.18(a) and related commentary as proposed, with certain technical revisions to comment 18(a)–1 for clarity and consistency with the Bureau's changes to § 1005.18(b)(1)(ii), discussed below.

18(b) Pre-Acquisition Disclosure Requirements

Overview of the Final Rule's Pre-Acquisition Disclosure Regime for Prepaid Accounts

The final rule requires that new disclosures for prepaid accounts be provided to consumers before they acquire a prepaid account. The Bureau believes that providing these disclosures pre-acquisition will ensure that all consumers, regardless of the type of prepaid account they are acquiring, receive relevant information to better inform their decision before they have committed themselves to a particular account.

The new disclosure regime for prepaid accounts requires a financial institution to provide a consumer with both a ''short form'' and a ''long form'' disclosure pre-acquisition. The short form sets forth the prepaid account's most important fees and certain other information to facilitate consumer understanding of the account's key terms and aid comparison shopping among prepaid account programs.[359] The long form disclosure, on the other hand, provides the consumer with a comprehensive list of all of the fees

[356] *See* § 1005.5(b)(1), (3), and (4). As discussed in part II.B above, ED recently finalized a rule ''intended to ensure that students have convenient access to their title IV, HEA program funds,[] do not incur unreasonable and uncommon financial account fees on their title IV funds, and are not led to believe they must open a particular financial account to receive their Federal student aid.'' 80 FR 67126 (Oct. 30, 2015). ED considered, but did not adopt, limitations on schools or financial institutions sending students ID cards that can act as access devices to a student's account. *Id.* at 67159. In stating its decision, however, ED noted that distribution of such ID cards would constitute an unsolicited issuance under § 1005.5(b); accordingly, financial institutions must still comply with consumer protection rules regarding unsolicited access device issuance. *Id.*

[357] *See* § 1005.5(b)(2).

[358] *See* 80 FR 67126, 67128 (Oct. 30, 2015).

[359] The final rule also requires pre-acquisition disclosure of certain information outside but in close proximity to the short form disclosure. *See* final § 1005.18(b)(5).

associated with the prepaid account and detailed information on how those fees are assessed, as well as certain other information about the prepaid account program. The long form provides consumers an opportunity to review all fee information about a prepaid account before acquiring it. In sum, the short form provides a snapshot of key fees and information, while its companion disclosure, the long form, provides an unabridged, straightforward list of fees and greater detail regarding use of the prepaid account.

The Bureau understands that there are many methods through which a consumer can acquire a prepaid account, and it has designed the final rule's disclosure regime to be adaptable to all these methods. For example, a consumer might purchase a prepaid account at retail, online through a financial institution's Web site (or the Web site of a service provider such as a program manager), or by telephoning the financial institution (or program manager). An employee might receive a payroll card account from an employer, or a student might receive a prepaid account from his or her university in connection with the disbursement of financial aid. A government benefit recipient might receive benefit payments on a government benefit card distributed by the agency responsible for administering those benefits, or an insurance company might distribute prepaid cards to consumers to disburse property or casualty insurance proceeds.

The Bureau has tailored the final rule to accommodate these varied methods while maintaining the overall integrity of the required disclosures. This tailoring includes permitting special formatting for prepaid disclosures delivered electronically; permitting disclosure of discounts and waivers for the periodic fee; permitting information within the short form disclosure for payroll card accounts (and government benefit accounts) directing consumers to sources of information regarding State-required information and other fee discounts and waivers; and accommodating disclosure of fees for optional services as well as those charged on non-traditional prepaid accounts, such as digital wallets, via a requirement to disclose certain information about additional types of fees not otherwise disclosed on the short form. The Bureau believes that creating a generally consistent and comprehensive disclosure regime that applies before the consumer's acquisition of a 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 relevant information at an opportune time in the acquisition sequence to better inform his or her purchase and use decisions.

The content and structure of the short form and long form disclosures set forth in the final rule largely mirror that of the proposed rule, although the Bureau has refined various elements and reorganized the disclosure provisions in the final rule to simplify the structure and aid compliance. See the individual section-by-section analyses below under this § 1005.18(b) for a more detailed discussion of each aspect of the final pre-acquisition disclosure regime. The following provides a summary of the key provisions in the final rule's pre-acquisition disclosure regime.

The short form disclosure. The short form disclosure, designed to provide a snapshot of key fees and information for a prepaid account, features a section for fees and a section for certain other information. The fee section must appear in the form of a table, and consists of two parts. The first part contains ''static'' fees, setting forth standardized fee disclosures that must be provided for all prepaid account programs, even if such fees are $0 or if they relate to features not offered by a particular program. The second part provides information about some additional types of fees that may be charged for that prepaid account program.

Specifically, the static portion of the short form fee disclosures features a ''top line'' component highlighting four types of fees at the top of the form: The periodic fee, the per purchase fee, ATM withdrawal fees (parsed out for both in- and out-of-network withdrawals in the United States), and the cash reload fee. As discussed in more detail in part III.A above, the Bureau believes these fees are the most important to consumers when shopping for a prepaid account. For this reason, the top line is designed to quickly draw the attention of consumers through its dominant location and use of larger and more prominent type than that used for the remainder of the disclosures on the short form. Located just below the top line are disclosures for three other types of fees: ATM balance inquiry fees (parsed out for both in- and out-of-network balance inquiries in the United States), customer service fees (parsed out for both live and automated customer service), and the inactivity fee. While the final rule generally prohibits disclosure of third-party fees, the final rule requires that the cash reload fee disclosed in the top line include third-party fees.

The static fees are followed by a portion of the disclosure that addresses additional types of fees specific to that prepaid account program. For the final rule, the Bureau has brought together the proposed statement disclosing the number of ''other fees'' not listed on the short form disclosure and the proposed disclosure of ''incidence-based fees'' into a common category referred to as ''additional fee types'' and located these disclosures together on the short form immediately following the static fee disclosures. First, the final rule requires a statement disclosing the number of additional fee types the financial institution may charge consumers with respect to the prepaid account (the proposal would have required disclosure of the total number of individual fees rather than fee types). Second, the final rule requires a statement explaining to consumers that what follows are examples of some of those additional fee types.

Next, the two additional fee types that generate the highest revenue from consumers above a de minimis threshold must be disclosed. These fee types must be calculated for the prepaid account program or across prepaid account programs that share the same fee schedule. In general, financial institutions must assess their additional fee types every 24 months and, if necessary, update their disclosures. There is an exception to this requirement, however, such that financial institutions are not required to pull and replace disclosures provided on, in, or with prepaid account packaging material if there is a change in the additional fee types required to be listed. (Under the proposal, this disclosure would have been based on incidence rather than revenue, would have been three fees rather than two, and updating would have been required every 12 rather than 24 months. The de minimis threshold and assessment across programs that share the same fee schedule are also new to the final rule.) The final rule also contains additional flexibility regarding the timing for reassessments, voluntary disclosures of additional fee types in certain circumstances, and disclosure of fee variations within additional fee types.

The final, non-fee section of the short form is comprised of a series of statements containing certain other key information regarding the prepaid account. The final rule generally requires disclosure of the highest fee when the price of a service or feature may vary and permits use of a symbol, such as an asterisk, to indicate that those fees may vary; the statement linked to that asterisk must appear below the fee disclosures. The final rule also permits use of a different symbol,

such as a dagger, to provide specific information about waivers or discounts for the periodic fee only. Next is a statement indicating whether an overdraft credit feature may be offered in connection with the prepaid account and, if so, an explanation that the feature may be offered after a certain number of days and that fees would apply. In contrast to the proposal, the final rule requires disclosure both when a prepaid account is set up to be eligible for FDIC or NCUA insurance and when it is not, and combines this statement with the call to action for the consumer to register the account, if applicable. The final rule requires disclosure of the URL for a Bureau Web site from which consumers can obtain general information on prepaid accounts. The short form disclosure concludes with a statement directing consumers to where they can obtain information on all fees and services for that particular prepaid account program. The Bureau has incorporated into the regulatory text of the final rule specific language for each of these statements rather than referencing the model forms for such language.

Short form disclosures for payroll card accounts (and government benefit accounts). The final rule contains an additional requirement and an additional accommodation for short form disclosures for payroll card accounts (and government benefit accounts). For these accounts, like in the proposal, financial institutions are required to include a statement regarding alternate wage (or benefits) payment options above the top-line fee disclosures. The final rule permits financial institutions to choose between two different statements to make this disclosure. The first statement simply informs consumers that they do not have to accept the card and directs them to ask about other ways to receive their wages. The alternative statement informs consumers that they have several options to receive their wages, followed by a list of those options, and directs them to tell their employer which option they choose. The final rule also permits financial institutions to include an optional line in the informational statements portion of the short form disclosure for these accounts directing consumers to a particular location outside the short form for State-required information and other fee discounts and waivers.

Short form disclosures for multiple service plans. The final rule permits financial institutions offering prepaid account programs with multiple service plans to use a short form disclosure specifically tailored for these products. The Bureau has redesigned the multiple service plan short form to be more simple and clear, incorporating a multi-columned structure for displaying all short form fees across all plans.

Additional disclosures outside the short form. The final rule requires that the following information be disclosed outside but in close proximity to the short form: The name of the financial institution; the name of the prepaid account program; and the purchase price and activation fee, if any.

The long form disclosure. The long form disclosure is the second part of the pre-acquisition disclosure regime for prepaid accounts and complements the short form disclosure. It sets forth in a table all of the prepaid account's fees and their qualifying conditions as well as other information about the prepaid account program. Similar to the short form, the long form also contains a series of statements following the fee table containing certain other key information regarding the prepaid account. First is a statement regarding registration and FDIC or NCUA insurance eligibility that mirrors the statement required for the short form, together with an explanation of the benefit of FDIC or NCUA insurance coverage or the consequence of the lack of such coverage. Next is a statement indicating whether an overdraft credit feature may be offered in connection with the prepaid account and, if so, an explanation that the feature may be offered after a certain number of days and that fees would apply; this statement also mirrors the one required in the short form disclosure. The final rule also requires contact information for the financial institution; the URL of a Bureau Web site where the consumer can obtain general information on prepaid accounts; and the Bureau Web site URL and telephone number to submit a complaint about a prepaid account. Finally, the long form must include certain Regulation Z disclosures if, at any point, a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z § 1026.61 may be offered in connection with the prepaid account. The final rule provides a safe harbor for financial institutions from having to reprint the long form disclosure due to changes in third-party fees or the Regulation Z disclosures.

Form and format of the disclosures. The final rule contains detailed provisions addressing the form and formatting of the short form and long form disclosures. These provisions reflect the changes to the multiple service plan short form design, discussed above, as well as several additional exceptions to the general retainability requirement for the pre-acquisition disclosures and clarification regarding how certain requirements apply to electronic disclosures (including how to comply with the requirement that electronic disclosures be viewable across all screen sizes). The final rule contains additional formatting requirements to address new disclosure elements added to the final rule, including several optional elements discussed above. The final rule also contains a provision requiring that fee names and other terms be used consistently within and across the short form and long form disclosures.

Model and sample disclosure forms. The final rule contains five model form variations for the short form disclosure: Two iterations of the short form disclosures generally, one for payroll card accounts, one for government benefit accounts, and one for prepaid account programs with multiple service plans. *See* Model Forms A–10(a) through (e). The final rule also contains a sample long form disclosure. *See* Sample Form A–10(f). The model forms provide a safe harbor to financial institutions that use them (provided that the model forms are used accurately and appropriately), unlike the sample form which serves only as an example. Whether a financial institution chooses to use a model form for its short form disclosure or design its long form disclosure based on the long form, the financial institution must of course tailor its disclosures for the specific prepaid account program in order to comply with the requirements of § 1005.18(b).

For the convenience of the prepaid industry and to help reduce development costs, the Bureau is also providing native design files for print and source code for Web-based disclosures for all of the model and sample forms included in the final rule. These files are available at *www.consumerfinance.gov/prepaid-disclosure-files*.

Timing requirements for pre-acquisition disclosures generally and the alternative timing regime for prepaid accounts acquired at retail locations and orally by telephone. The final rule generally requires that the disclosures required by § 1005.18(b) be provided before a consumer acquires a prepaid account. Commentary to the final rule explains that a consumer acquires a prepaid account by purchasing, opening, or choosing to be paid via a prepaid account, and includes several examples.

Consistent with the proposal, the final rule also provides special rules for

situations in which a consumer acquires a prepaid account at retail or orally by telephone. In these situations, a financial institution must provide the short form disclosure to the consumer prior to acquisition and must provide methods for consumers to access the long form by telephone and via a Web site prior to acquisition. If these conditions are met, the financial institution does not need to provide the long form in writing until after acquisition. The Bureau has expanded this exception in the final rule to cover all retail locations (rather than just retail stores) that sell prepaid accounts in person, without regard to whether the location is operated by a financial institution's agent. A financial institution selling its own prepaid accounts in its own branches does not qualify for the retail location exception with respect to those prepaid accounts.

Prepaid accounts acquired in foreign languages. A financial institution must provide the pre-acquisition disclosures in a foreign language if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in certain circumstances. Unlike the proposal, the final rule does not require a financial institution to provide pre-acquisition disclosures in a foreign language if an employee of the financial institution or a third party uses that foreign language in person with the consumer. The financial institution also must provide the long form disclosure in English upon a consumer's request and on its Web site.

Background and the Bureau's Proposed Pre-Acquisition Disclosure Regime for Prepaid Accounts

EFTA section 905(a) sets forth disclosure requirements for accounts subject to the Act. The relevant portion of EFTA section 905 states that the terms and conditions of EFTs involving a consumer's account shall be disclosed at the time the consumer contracts for an EFT service, in accordance with 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 EFTs or for the right to make such transfers,[360] that a fee may be imposed for use of certain ATMs,[361] information regarding the type and nature of EFTs that the consumer can initiate,[362] and details regarding the consumer's liability for unauthorized transactions and whom to contact in the event an unauthorized transaction has occurred.[363] The implementing regulation for this provision, § 1005.7, further elaborates that the required disclosures must be provided to a consumer at the time a consumer contracts for an EFT or before the first EFT is made involving the consumer's account. However, while EFTA section 905(a) and § 1005.7(b) mandate the inclusion of several specific items, they do not specify a particular format for the disclosures.[364] At various points, these general provisions in § 1005.7 have been modified for use with other types of accounts or in other contexts.[365]

Section 1005.18(b) of the final rule implements, in part, EFTA section 905(a) for prepaid accounts. In addition, pursuant to its authority under EFTA sections 904(a), (b), and (c) and 905(a), and section 1032(a) of the Dodd-Frank Act, the Bureau is requiring 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. Also, the Bureau is requiring that in certain circumstances financial institutions provide disclosures in languages other than English.

The Bureau proposed a new pre-acquisition disclosure regime for prepaid accounts, separate from the general requirements under § 1005.7, for several reasons. First, the Bureau was concerned that providing core pricing and usage information at the time the contract is formed or prior to the first EFT would be too late for many consumers to make informed acquisition decisions. As the Bureau explained in the proposal, for instance, the Bureau understood based on its outreach that many financial institutions were providing only limited fee information on the outside of packaging for GPR cards, so that consumers would have to purchase the card to access comprehensive information about the card's fees and terms. Similarly, the Bureau was concerned about the acquisition process for payroll card accounts, where new employees often receive account terms and conditions documents at the same time they received large quantities of other benefits-related paperwork, and about the sequencing of account disclosures in an online environment.

Second, the Bureau believed that it was important to provide specific formatting information that would ensure substantial consistency to facilitate consumers' comparison and selection process across a range of acquisition channels and carefully balance concerns about information overload. The Bureau therefore designed and developed its proposed pre-acquisition disclosures for prepaid accounts over the course of several years through a process that included consumer testing conducted both prior to and after the publication of the proposal and feedback from stakeholders in direct meetings, comments responding to the Prepaid ANPR, and follow up to a blog post of prototype disclosure designs.[366]

The majority of both industry and consumer groups agreed that it was important for consumers to receive disclosures before they purchase a prepaid account. Industry and consumer groups 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. The majority also strongly supported standardized disclosures, instead of a more general rule requiring only that fees be disclosed clearly and conspicuously without providing specific instructions or model forms. However, industry mostly advocated 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. On the other hand, many

[360] EFTA section 905(a)(4).

[361] EFTA section 905(a)(10).

[362] EFTA section 905(a)(3).

[363] EFTA section 905(a)(1) and (2).

[364] Specifically, section 905(a) and § 1005.7(b) generally require disclosure of details regarding the types of EFTs that the consumer may make (including limitations on the frequency and dollar amount of the transfers), any fees imposed by the financial institution for EFTs 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 EFT or makes a balance inquiry, among other requirements.

In addition, TISA contains disclosure requirements for accounts issued by depository institutions. Specifically, Regulation DD, 12 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. Regulation DD § 1030.4(b)(4).

[365] *See generally* § 1005.14(b)(1) (disclosures provided by certain service providers), 61 FR 19662, 19674 (May 2, 1996); existing § 1005.15(d) (disclosures related to the EFT of government benefits), 61 FR 19662, 19670 (May 2, 1996); § 1005.16 (disclosures at ATMs), 78 FR 18221, 18224 (Mar. 26, 2013); § 1005.17(d) (overdraft disclosures), 74 FR 59033, 59053 (Nov. 17, 2009); existing § 1005.18(c)(1) (payroll card account disclosures), 71 FR 51437, 51449 (Aug. 30, 2006); and § 1005.31 (disclosures related to remittance transfers), 77 FR 50244, 50285 (Aug. 20, 2012).

[366] 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/.*

consumer groups urged provision of a full disclosure to the consumer of all fees associated with a GPR card, voicing concern that consumers would not get a full understanding of a prepaid account's true costs without comprehensive fee information and that providers could subvert a limited scope disclosure by adjusting fee schedules to increase or add fees not required to be disclosed on a shorter disclosure.

To balance such concerns, the Bureau proposed to require financial institutions to provide both a short form and a long form disclosure, as generally described above, prior to the time the consumer acquires a prepaid account. The proposed short form focused on the fees charged most frequently across most types of prepaid account programs, as well as providing limited information about the three fees incurred most frequently by users of the particular program. The short form thus would have provided largely consistent information for purposes of comparison, while also providing certain unique information about other fees that were charged most frequently to consumers (so-called ''incidence-based fees'') and other cues encouraging the consumer to consult the long form for more detailed and comprehensive information. The Bureau also proposed to require that financial institutions provide the disclosures in languages other than English in certain circumstances.

Specifically, proposed § 1005.18(b)(2) would have set forth the substantive requirements for the Bureau's proposed prepaid account pre-acquisition disclosure regime, with content requirements for the short form disclosures addressed by proposed § 1005.18(b)(2)(i), content requirements for the long form disclosure addressed by proposed § 1005.18(b)(2)(ii), and form and formatting requirements for both disclosures addressed by proposed § 1005.18(b)(3) and (4), respectively.[367]

Depending on the structure of a particular prepaid account, however, the Bureau recognized that the proposed 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 pre-proposal consumer testing 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.[368] 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 have received 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. In addition, in pre-proposal testing, most participants did not identify any additional fees that they would have wanted to see listed in a short form.[369] The Bureau believed that the proposed short form contained most fees that might be charged in connection with a prepaid account and the fees listed are those that are most important for a consumer to know in advance of acquiring a prepaid account.

The Bureau also recognized that disclosing even this proposed subset of fee information on the short form ran the same risk of information overload that the Bureau believed could occur if all fees were disclosed to a consumer instead of just a subset of fees. The Bureau believed, however, based on its pre-proposal consumer testing and other research, that incorporating elements of visual hierarchy would mitigate these risks. Most importantly, the fee types that would have been disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) in the top line of the short form would have used font size and other elements to promote readability.

General Comments Received

The Bureau sought comment on its proposed overall approach to the pre-acquisition disclosure regime. Discussed in this section are the comments provided in response as well as certain other general comments received. Comments regarding particular aspects of the proposed pre-acquisition disclosure regime are addressed in the applicable section-by-section analyses below.

Several State government agencies, a majority of consumer groups, and a substantial number of industry commenters (including trade associations, a credit union, and a program manager) expressed general support for the proposed pre-acquisition regime, although most also offered criticisms and recommendations for change of some individual elements. The credit union and industry trade associations complimented the Bureau on the proposed pre-acquisition disclosures, with some commenters calling the short form disclosure an elegant and smart solution that would give consumers a clear, simple, and consumer friendly way to review critical data when shopping for prepaid accounts. Consumer groups and individual consumers who submitted comments as part of a comment submission campaign organized by a national consumer advocacy group also strongly supported the design and content of the proposed short form and long form disclosures as essential to protecting consumers. In particular, the consumer groups praised the short form disclosure's clear standardized form, saying it provides a good balance between simplicity and completeness.

Most industry commenters offered specific criticisms of or recommended changes to specific elements of the proposed pre-acquisition disclosure regime. Industry commenters' more general criticisms of the proposed disclosures included both that the amount of information in the short form disclosure would be overwhelming to consumers (and thus certain aspects should be eliminated, such as the disclosure of the number of additional fees, incidence-based fees, or any incidental fees that are excluded from the disclosure requirements of Regulation DD) and that the short form failed to provide certain information that the commenters believed to be meaningful to consumers' purchase decisions (such as disclosure of fee waivers and discounts instead of disclosure of the highest fee as proposed) and thus that additional information should be added.

More globally, one academic group and several industry commenters (including program managers, a credit union, and a regional credit union trade association) urged the Bureau to eliminate both the short form and long form disclosures. These commenters said variously that the proposed disclosures would overwhelm consumers, burden industry without commensurate benefits to consumers, or duplicate the initial disclosures already required by Regulation E. They also asserted that research by the Bureau and others indicated that few consumers engage in formal comparison shopping among prepaid accounts or that consumers lack the financial literacy or inclination to read disclosures (and thus, the Bureau's efforts to facilitate comparison shopping are unnecessary). One of the program managers and the academic group asserted that the highly competitive prepaid marketplace, which in their view had already produced lower fees and simpler fee structures,

[367] As discussed in detail below, the final rule addresses these requirements in § 1005.18(b)(2) and (4) and § 1005.18(b)(6) and (7), respectively.

[368] *See* ICF Report I at 9.

[369] *See id.* at 6–8.

was sufficient to meet the evolving needs of consumers. Industry commenters expressed concern regarding the burden they felt the proposed disclosures would impose; the program manager elaborated that the proposed disclosure regime would require expensive and time-consuming redesign of disclosures and changes in packaging, manufacturing processes, and distribution.

A number of other industry commenters and a group of members of Congress opposed one, but not both, of the proposed pre-acquisition disclosures. A few industry commenters (including an issuing credit union, a credit union association, and a program manager) recommended eliminating the short form disclosure in favor of the long form disclosure. A larger group (including trade associations, issuing banks, credit unions, program managers, a law firm writing on behalf of a coalition of prepaid issuers, and the group of members of Congress) recommended eliminating the long form disclosure in favor of the short form—or at least that the long form not be required to be provided pre-acquisition or only be required to be provided online, over the telephone, or upon request. As a whole, both groups of commenters asserted that requiring both of the proposed disclosures would result in too many disclosures (the short form and long form, prepaid account agreement containing initial disclosures, and State-required disclosures for payroll card accounts), resulting in high compliance costs and disclosure fatigue for consumers.

The industry commenters recommending elimination of the short form asserted that it was redundant of the long form, which they argued would be sufficient alone by virtue of it providing a complete disclosure of fees. The program manager recommended combining the short form and the long form to create a single comprehensive pre-acquisition disclosure. The industry commenters critical of the long form variously asserted that it was redundant of the short form and other disclosures required by Regulation E before a consumer can use the prepaid card (*i.e.,* initial disclosures) and State-required disclosures for some payroll card accounts; inferior to the short form, which would provide the most pertinent and common fees; and would overload and confuse consumers with its comprehensive information and therefore not contribute to consumer purchase decisions. An issuing bank, a program manager, a trade association, and a group of members of Congress recommended against requiring the long form, arguing that the Bureau's pre-proposal consumer testing indicated consumers would not use it to make pre-acquisition decisions. Several industry commenters opposed required disclosure of optional incidental services that are not available at the time of purchase; rather, they suggested those fees should not have to be disclosed until such services are accepted by the consumer.

A number of industry commenters and a State government agency recommended that the Bureau eliminate the proposed short form disclosure requirement for payroll card accounts and government benefit accounts or, alternatively, treat the short form disclosure for these accounts differently from those for GPR cards. Some of these commenters said otherwise these disclosures would be burdensome for financial institutions providing payroll (and government benefit) cards for a number of reasons. They said the proposed disclosures were, in their opinion, duplicative of the initial disclosures required by § 1005.7(b) and that the differences between payroll card accounts (and government benefit accounts) and GPR cards militate against requiring a short form disclosure for the former. They said that, compared to GPR cards, these accounts have fewer fees, features, and conditions, and the statement regarding registration and many specific fees listed in the static portion of the proposed short form are inapplicable. They also pointed to State-required disclosure of certain fee discounts and waivers for these accounts as another distinguishing factor from GPR cards. Some commenters said the proposed disclosures were inapt for payroll card accounts (and government benefit accounts) as there are not the same space constraints as there are for GPR cards sold at retail and, further, consumers cannot comparison shop for these kinds of accounts. Finally, some commenters requested that the Bureau eliminate the long form disclosure for these types of accounts as they said it would be redundant of the short form disclosure and the prepaid account agreement; they also suggested that the long form disclosure could be provided post-acquisition or at the time of registration or activation in the payroll (and government benefit) context.

Rather than eliminating the short form disclosure altogether for payroll card accounts (and government benefit accounts), some industry commenters recommended that the Bureau eliminate certain short form requirements, such as the registration statement which would be inapplicable for these products.[370] On the other hand, other industry commenters recommended permitting additional disclosures on the short form, such as disclosure of State-required methods to access wages without incurring fees. Some recommended requiring disclosure of all fees on the payroll card account (and government benefit account) short form disclosure as these accounts generally have fewer fees, thereby allowing room for full fee disclosure.

Similarly, some industry commenters argued that differences in other types of prepaid accounts necessitated greater flexibility in the content and delivery requirements for the short form disclosure. For example, some industry commenters, including issuing banks, program managers, and a trade association, recommended that the Bureau exclude non-reloadable prepaid products from the proposed disclosure regime, or at least from certain disclosure requirements such as those regarding registration and eligibility for FDIC insurance. Some industry commenters suggested that requiring standardized disclosures for these products would be of limited use to consumers given how the products are meant to be used, and would come at a prohibitively high cost for issuers; several suggested the burden of complying with the proposed disclosure requirements—for example, the requirement to calculate incidence-based fees—may lead to the removal of certain of these products from market. These commenters suggested instead that the Bureau create a separate disclosure regime for non-reloadable cards, similar to the treatment of loyalty, award, and promotional gift card products under the Gift Card Rule.[371]

Likewise, several trade associations and a provider of digital wallets urged the Bureau not to sweep innovative financial services, such as digital wallets, into a disclosure regime they felt was designed for a specific type of product (*i.e.,* GPR cards sold at retail) based on how it functioned at a fixed point in time. Specifically, the digital wallet provider argued that disclosures cannot be standardized effectively across industries as diverse as digital wallets and GPR cards. In addition, the commenter stated that current digital

[370] See the section-by-section analysis of § 1005.18(b)(2)(xiv) below for a discussion of elements that commenters suggested the Bureau remove from the short form disclosure in the payroll (and government benefit) context.

[371] *See* § 1005.20(a)(4)(iii) (exempting loyalty, award, or promotional gift cards from general coverage of the Gift Card Rule provided that they satisfy certain specific disclosure requirements).

wallet models do not charge any fees for general usage. As such, the proposed short form disclosure's top-line fees would all be disclosed as $0 or N/A, which it said could potentially confuse consumers and cause them to abandon the digital wallet sign-up process. The commenter also noted that, because consumers are not likely to comparison shop between digital wallets and GPR cards, it believed the comparison shopping benefit of the short form disclosure would be inapplicable to digital wallets.

A payment network and a law firm writing on behalf of a coalition of prepaid issuers criticized the proposal for not providing a method for updating or curing outdated pricing, which it said issuers may typically accomplish through disclosures and consumer consent at registration, or at a later point in the customer relationship through a Regulation E change-in-terms notice. The payment network suggested that the Bureau grant a safe harbor and allow financial institutions to keep existing physical cards stocked at retail locations and notify consumers of any changes either by sending change-in-terms notices or by obtaining consumer consent upon registration. This commenter added that this approach would both cure outdated pricing on card packaging and also allow financial institutions to introduce new features that have a fee.

While consumer groups generally supported the proposed disclosures, they also asserted some criticisms focused primarily on requesting that the Bureau prohibit certain fees, add certain information to either or both the short form and long form disclosures, and eliminate the proposed short form disclosure for multiple service plans. A few consumer groups also recommended enhancing the disclosures with visual aids, such as an image of a piggy bank to denote that an account offers a savings feature.

The Bureau's General Approach to the Final Rule

For the reasons set forth herein, the Bureau is adopting a disclosure regime in final § 1005.18(b), under which financial institutions must generally provide both a short form and a long form disclosure before consumers acquire prepaid accounts. The final rule generally retains the content, formatting, and delivery requirements of the short form and long form disclosures as proposed, but includes substantial refinements to some individual elements and numerous smaller changes in response to information received through comments received on the proposal, the interagency consultation process, further consumer testing, and other research and analysis. The Bureau believes the final rule's disclosure requirements will achieve the desired results of providing consumers with a succinct and engaging overview of crucial information in the short form disclosure and an unabridged reference for all fees and other crucial information in the long form disclosure.

The Bureau has also made substantial organizational changes to the structure of the final rule to facilitate understanding and compliance. The Bureau also has incorporated certain burden-reducing measures to address various concerns raised by commenters about the burden on industry they asserted would result from the proposed pre-acquisition disclosure regime. The analysis of costs and benefits in part VII.E.1 as well as the section-by-section analyses below both contain discussion of provisions adopted in this final rule that are aimed at reducing burden on industry relative to the proposal. These burden-alleviating modifications include the various changes to the additional fee types disclosures, including disclosure of two fees rather than three; a de minimis threshold; and reassessment and updating required every 24 months rather than 12. Other measures in the final rule that reduce burden include permitting reference in the short form disclosure for payroll card accounts (and government benefit accounts) to State-required information and other fee discounts and waivers pursuant to final § 1005.18(b)(2)(xiv)(B); permitting disclosure of the long form within other disclosures required by Regulation E pursuant to final § 1005.18(b)(7)(iii); and flexible updating of third-party fees pursuant to § 1005.18(b)(4)(vii).

Although some industry commenters suggested that the competitive nature of the prepaid market forecloses the need for disclosure regulation, the Bureau believes both consumers and industry are better served by disclosure regulations carefully calibrated to balance the needs and concerns of all parties.

The Bureau is issuing the final rule pursuant to EFTA section 904(a), (b), and (c), and 905(a) and 913(2), and section 1032 of the Dodd-Frank Act. As discussed further below in the section-by-section analyses of § 1005.18(b)(1)(i), (b)(2)(xiv), (b)(4)(ii), and (b)(9), the Bureau believes that adjustment of the timing and fee requirements 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 consumers because the 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 section 1032(a) of the Dodd-Frank Act, 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.

Short form and long form disclosures generally. As discussed in the proposal, the Bureau believes the short form and long form disclosures both play crucial but distinct roles. Eliminating one or both would defeat the overall purpose of the pre-acquisition disclosure regime to provide consumers with comprehensible information to make reasoned purchase and use decisions with regard to their prepaid accounts. The short form discloses key fees and information to consumers in a standardized visual hierarchy that lends itself to comparison shopping prior to purchase and provides a handy summary post-purchase; the long form provides a comprehensive location for all fees and other information that a consumer may consult both prior to and after purchase. In the absence of such a disclosure regime, consumers have scant opportunity to see all fees prior to purchase or to quickly assess the relative benefits of one prepaid account over another.

Specifically, the Bureau believes that by prominently displaying key fees with limited explanatory text, the short form enhances consumers' ability to notice these key fees and enables them to use the disclosure to inform their acquisition choice. The Bureau also believes that the short form's design, and in particular the emphasized top-line portion of the disclosure, creates a visual hierarchy of information that will more effectively draw consumers' attention to a prepaid account's key terms. The Bureau also believes the general visual hierarchy as well as the relatively spare content of the short form increases the likelihood that consumers will engage with the disclosure.

The Bureau understands that, faced with the disclosures in the current marketplace, consumers may spend little time reviewing fee disclosures, particularly when shopping for prepaid accounts in person. The Bureau believes it is therefore important to provide a disclosure that quickly draws

consumers' attention to the most important information regarding that particular account with minimal clutter on the form. For this reason, the Bureau designed and developed the short form as a concise snapshot of a prepaid account's key fees and features that is both easily noticeable and digestible by consumers. Relatedly, the Bureau also believes that the overall standardization of the short form disclosure will facilitate consumers' ability to comparison shop among prepaid account programs. The standardization of the static fee components of the short form disclosure ensures that consumers will be provided certain key fee information about prepaid accounts in a consistent manner regardless of how or where they shop for or obtain prepaid accounts. For example, under the final rule, a consumer who takes a package containing a prepaid account access device off of a J-hook in a retail location would see the same fee disclosures in the static portion of the short form as that consumer would see if shopping online for a prepaid account. Similarly, the standardization of the informational statements at the bottom of the short form permits that consumer to easily compare, for example, whether the prepaid accounts are eligible for FDIC or NCUA insurance.

The Bureau believes that consumers offered payroll card accounts at their place of employment can also benefit from this standardization because, even though they cannot comparison shop among payroll card accounts, they can make meaningful comparisons with a prepaid account they may already have or with one they may choose to acquire in lieu of the payroll card account. Moreover, the straightforward standardized format of the short form can enhance consumers' comprehension of the key terms of the payroll card account if they do choose to acquire it. In sum, the Bureau believes that standardizing the short form disclosure across all possible acquisition channels will enhance consumer understanding of the terms of all prepaid accounts and make it easier for consumers to choose the prepaid account that best meets their needs.

The Bureau recognizes that providing only a subset of a prepaid account program's fee information on the short form might not provide all consumers with the information they need to make fully-informed acquisition decisions. For this reason, the new disclosure regime also requires the long form disclosure to be provided as a companion disclosure to the short form, offering a comprehensive repository of all of a prepaid account's fees and the conditions under which those fees could be imposed. The long form disclosure also provides detailed explanations to consumers about conditions that may cause fees to vary, such as the impact of crossing a threshold number of transactions or specific waivers and discounts. Such explanations are generally not permitted on the short form to preserve its simplicity, but may be relevant to some consumers' acquisition decisions.

The Bureau expects that consumers will use the long form if they want to review a comprehensive list of fees before choosing to acquire a prepaid account and learn details about the fees listed on the short form. In sum, the short form and the long form used alone or in tandem provide consumers with either or both an overview of the key information about the prepaid account and an unabridged list of fees and conditions and other important information.

The Bureau believes that providing both disclosures is more beneficial than either form standing alone, and the Bureau does not believe that providing only the long form would be satisfactory. The Bureau understands that the potential size and complexity of the long form could lead consumers to disregard the disclosure in some settings, such as in retail locations where consumers are shopping while standing up, and not use it to comparison shop across products or even to evaluate a single product. However, in the Bureau's pre-proposal testing of a simulated purchase environment, some participants indicated they would use information found only in the long form disclosure, *i.e.,* information absent from the short form disclosure, in making their purchase decisions.[372] Thus, insofar as the subset of fee information on the short form disclosure may be incomplete or insufficient for some consumers, the Bureau believes that providing both the short form and long form disclosures will 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.

Disclosures for payroll card accounts and government benefit accounts. The Bureau declines, as requested by some commenters, to eliminate the proposed short form disclosure requirement for payroll card accounts and government benefit accounts or, alternatively, create a short form disclosure specifically for these accounts, for several reasons. First, the short form disclosure provides an opportunity to clearly and conspicuously inform consumers of their wage and benefit payment rights under the compulsory use prohibition in EFTA section 913 and § 1005.10(e)(2), which the Bureau believes is key information for consumers. If the short form disclosure were eliminated and this statement was moved to the long form disclosure, for example, the Bureau believes it likely this information would be obscured by the relatively increased length and complexity of the long form disclosure and thereby deprive consumers of an opportunity to be informed of this crucial statutory right.

Second, the short form disclosure is important because consumers may be more likely to view it than the long form disclosure. The short form disclosure was designed to showcase information the Bureau believes is most important to consumers in their general prepaid account purchase and use decisions and such information is intended to complement the information disclosed in the more detailed long form. Pre-proposal testing indicated that consumers would prefer the short form over the long form when shopping for a prepaid card in certain environments, such as at retail while standing up.[373] The Bureau believes that consumers will benefit from receiving the short form disclosure for payroll card accounts and government benefit accounts in that consumers may receive multiple pieces of written information at the beginning of a new job or when applying for government benefits, that may compete for the consumer's attention. Thus, even if consumers do not look at the long form disclosure before choosing to receive wages or benefits via the account, they may at least see information about key fees and features of the account on the short form disclosure.

Third, while employees cannot comparison shop among payroll card accounts or government benefit accounts, the short form disclosure provides a convenient way to compare key fees and features with the consumer's own prepaid account (if they have one) and, perhaps at a later time, with other prepaid accounts. Consumers may also use the short form disclosure to quickly assess the relative advantage of receiving their wages (or benefits) via the account versus other payment methods, such as direct deposit to a bank account or by check.

[372] *See* ICF Report I at 32–33.

[373] *See* ICF Report I at 34.

In sum, while the consumer may not comparison shop among payroll card accounts (or government benefit accounts), the short form disclosure nevertheless provides important comparison opportunities for consumers offered payroll card accounts (and government benefit accounts).

Finally, while the Bureau understands that some payroll card accounts (and government benefit accounts) currently charge fewer fees and offer fewer features than GPR cards, requiring the short form disclosure in this context ensures that consumers know that certain features and services are free or unavailable and further, it ensures they will be apprised of the charges for any new fees the payroll (or government benefit) industry may impose on such accounts in the future.

Disclosures for non-reloadable cards and digital wallets. The Bureau also considered the comments requesting exemption from the short form disclosure requirements for non-reloadable cards and digital wallets, but declines such exemption in the final rule. The Bureau believes consumers who buy these product types will benefit from the short form disclosure. As discussed above with respect to payroll card accounts and government benefit accounts, the short form disclosure was designed to showcase information participants identified in the Bureau's pre-proposal consumer testing as key to their general prepaid account purchase and use decision-making; such information is intended to complement the information disclosed in the more detailed long form. In addition, the Bureau is concerned that creating an individualized disclosure regime for different types of prepaid accounts could create a patchwork regulatory regime, which is one of the results this rule seeks to prevent.

With respect to the request to exempt digital wallets from the pre-acquisition disclosure requirements (particularly the short form), the Bureau believes consumers of digital wallets should have the same opportunity to review fees (or lack thereof) in the short form disclosure as consumers of other prepaid accounts. While the majority of digital wallet models currently on the market may not charge usage fees, as one commenter asserted, this may not hold true in the future, especially if these products become more widely used and the features and services offered broaden. The Bureau is also not persuaded that there are sufficient factors distinguishing digital wallets from other types of prepaid accounts that are marketed or available for acquisition electronically. The Bureau is skeptical that the technical and other constraints suggested by commenters would impact the ability of digital wallets to provide pre-acquisition disclosures. The Bureau is not persuaded, therefore, that a convincing policy rationale exists for treating digital wallets differently than other prepaid accounts with regard to pre-acquisition disclosures.

Changes in terms and addition of new EFT services. The Bureau understands financial institutions do not change the fee schedules for most prepaid accounts often, especially for prepaid products distributed in person, such as GPR cards and similar products sold at retail, because a financial institution may need to pull and replace outdated card packaging when making changes to those programs' disclosed fee structures. Financial institutions' reasons for pulling and replacing may include compliance with legal requirements under operative State consumer protection and contract laws, difficulties that may arise in attempting to provide notice of changed terms to consumers, as well as financial institutions' concerns about being accused of deceptive advertising practices by selling products with inaccurate disclosures. The Bureau encourages the practice of pulling and replacing when making significant changes to prepaid account programs, as it believes that doing so will facilitate consumer understanding of the products they are purchasing and reduce risk to the financial institution of litigation or regulatory claims of deception.

Two industry commenters, however, stated that financial institutions also sometimes make changes either through disclosures and consumer consent at registration, or at a later point in the customer relationship through a Regulation E change-in-terms notice. The Bureau recognizes that Regulation E provides a system for notifying existing customers of changes in terms to existing accounts, set forth in § 1005.8(a). The Bureau believes that in some circumstances, such procedures may also provide an appropriate means to notify new customers of changes to recently acquired prepaid accounts.

The Bureau also notes that Regulation E also provides a means, separate from a change-in-terms notice, for financial institutions to notify consumers of terms associated with a new EFT service that is added to a consumer's account, in § 1005.7(c).[374] The Bureau believes that such procedures are appropriate in circumstances where a financial institution is, for example, making available a new optional service for all prepaid accounts in a particular prepaid account program. In such a circumstance, financial institutions do not need to pull and replace card packaging that does not disclose that new optional feature, even though a long form disclosure that may be provided inside the card packaging pursuant to § 1005.18(b)(1)(ii)(A), the number of additional fee types pursuant to § 1005.18(b)(2)(viii), and the listing of additional fee types pursuant to § 1005.18(b)(2)(ix) may be incomplete or inaccurate due to the addition of that service. Instead, a financial institution may provide to new customers disclosures for the addition of the new service in accordance with § 1005.7(c) post-acquisition. The Bureau expects, however, that financial institutions will keep their other disclosures up to date (including those provided electronically and orally, as well as disclosures provided in writing that are not a part of pre-printed packaging materials, such as those printed by a financial institution upon a consumer's request).

Other requests by commenters. In response to the consumer groups requesting the addition of visual aids to the disclosures, the Bureau believes that there is insufficient space in the short form to accommodate such visuals and that the length and detail of the information in the long form disclosure obviate the need for such additional requirements there.

With regard to comments from some consumer group commenters and the office of a State Attorney General recommending prohibition of certain fees, such requests are outside of the scope of this rulemaking. However, the Bureau intends to monitor compliance with this rule as well as developments in the prepaid market in general, and will consider additional action in future rulemakings if necessary.

Alternative Approaches Considered by the Bureau

Before proposing the pre-acquisition disclosure regime that the Bureau is adopting in this final rule, the Bureau considered and rejected two alternative approaches. As discussed in the proposal, an ''all-in'' approach would have disclosed a single monthly cost for using a particular prepaid account.[375] Proponents of this approach said it would provide a quick and understandable reference point and, as compared to a disclosure listing several different numbers with line items for

[374] *See also* final § 1005.18(f)(1), which extends the requirements of § 1005.7 to all fees, not just fees for EFTs or the right to make EFTs.

[375] *See* 79 FR 77102, 77150–51 (Dec. 23, 2014).

each fee type, could also allow for easier comparisons among prepaid account programs. The Bureau also considered the ''category heading'' approach which would have featured a short form disclosure with category headings based on the function for which a consumer would use the service associated with each fee, a format that many prepaid account providers have already adopted, in lieu of the top-line fee type format the Bureau is adopting in this final rule.[376] The proposal included a discussion of the justification for the Bureau's rejection of these two alternative approaches in favor of the pre-acquisition disclosure regime that the Bureau proposed and is now adopting in this final rule.

The Bureau received few comments regarding these rejected alternatives. Two program managers expressed their support for the Bureau's decision to reject both the ''all-in'' and ''category heading'' approaches for the reasons the Bureau set forth in the proposal and an issuing bank supported the Bureau's reasoning for avoiding the all-in approach. One of the program managers noted that use of payroll cards varies significantly both by individual consumer and the specific employer's payroll card account program. On the other hand, two consumer group commenters recommended that the Bureau reconsider the feasibility of the ''all-in'' approach. While acknowledging the Bureau's valid concerns about determining typical usage costs given the wide variety of consumer use, they said that providing through the short form disclosure the estimated cost of typical use of a specific prepaid account would help the minority of consumers who are ''intensive users'' of prepaid accounts and use them essentially as a substitute for checking accounts. They recommended that the Bureau require financial institutions to analyze the distribution of accountholders' actual total expenses and identify total expenses at the 25th and 75th percentiles of distribution. They said this analysis would show that consumers who use a specific prepaid account product frequently for routine financial transactions would be likely to incur costs within a concrete range.

For the reasons the Bureau declined to embrace the ''all-in'' and ''category heading'' approaches in the proposal, the Bureau also has rejected these approaches in the final rule in favor of the pre-acquisition disclosure regime described above and throughout this final rule. As discussed in more detail in the proposal[377] and acknowledged by the consumer groups recommending the ''all-in'' approach, the Bureau continues to question the viability of developing a single formula that accurately reflects typical consumer use of a particular prepaid account program, including how to decide which fee types to include in such a formula and in view of studies indicating there are numerous use cases for prepaid accounts, particularly GPR cards.[378] Moreover, a prepaid account that might have a higher cost under such a formula adopted by the Bureau may actually be less costly for certain consumers, depending on how they use the prepaid account. For example, a formula that included ATM withdrawal fees would disclose an ''all-in'' fee not germane to consumers who do not withdraw cash via an ATM. The Bureau is concerned that such a result may be confusing to consumers. The Bureau also believes that an explanation of the methodology used to calculate the ''all-in'' disclosure would disturb the balance in the short form of the most important information for consumers and the brevity and clarity necessary for optimal consumer comprehension. Thus, the Bureau has concluded that an ''all-in'' disclosure would be of limited utility and could even mislead consumers, and declines to adopt such a disclosure in this final rule.

The Bureau also continues to believe the use of the ''category heading'' approach would not be appropriate because the headings would take up valuable space in the short form disclosure that would limit disclosure of other, more important information, particularly for headings under which there would only be disclosed one fee. Also, as discussed above, the Bureau's pre-proposal consumer testing indicated that the top-line approach embraced in the proposed and final rules proved effective with consumers and the Bureau does not believe that the short form disclosure could effectively accommodate both approaches together. Finally, pre-proposal testing revealed that participant comprehension of fees and their purposes did not improve with the use of category headings. The Bureau also notes that the less space-restricted long form disclosure, pursuant to § 1005.18(b)(7)(i)(B), requires the use of subheadings by the categories of function for which a financial institution may impose fees, as illustrated by Sample Form A–10(e). The Bureau thus declines to adopt a ''category heading'' approach for the short form disclosure in this final rule.

18(b) Pre-Acquisition Disclosure Requirements—Commentary

The Bureau is adopting two comments to accompany § 1005.18(b), as described below.

Written and electronic pre-acquisition disclosures. The final rule includes certain specific requirements for pre-acquisition disclosures depending on whether they are provided in written, electronic, or oral form. *See, e.g.,* § 1005.18(b)(1)(iii) and (6). The Bureau is adding new comment 18(b)–1 to provide additional guidance as to the interaction of these § 1005.18(b) disclosure requirements with the E-Sign Act and with other existing provisions within Regulation E. Specifically, comment 18(b)–1 explains that existing § 1005.4(a)(1) generally requires that disclosures be made in writing; written disclosures may be provided in electronic form in accordance with the E-Sign Act. The comment goes on to say that, because final § 1005.18(b)(6)(i)(B) provides that electronic disclosures required by final § 1005.18(b) need not meet the consumer consent or other applicable provisions of the E-Sign Act, § 1005.18(b) addresses certain requirements for written and electronic pre-acquisition disclosures separately. Final § 1005.18(b) also addresses specific requirements for pre-acquisition disclosures provided orally.

Disclosures in foreign currencies. A payment network commenter recommended that the Bureau permit disclosure of fees in a foreign currency for prepaid cards denominated in that currency. The commenter gave the example of permitting disclosures in pound sterling for prepaid accounts sold in U.S. airports for intended use in England. The Bureau is adding comment 18(b)–2 to clarify that such disclosures are permitted. Specifically, comment 18(b)–2 explains that fee amounts required to be disclosed by § 1005.18(b) may be disclosed in a foreign currency for a prepaid account denominated in that foreign currency, other than the fee for the purchase price required by § 1005.18(b)(5). The comment gives an example that a prepaid account sold in a U.S. airport intended for use in England may disclose in pound sterling (£) the fees required to be disclosed in the short form and long form disclosures and outside the short form disclosure, except for the purchase price.

[376] *See* ICF Report I at app. C, 2A. As listed in that prototype short form disclosure, 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 ATM.

[377] *See* 79 FR 77102, 77150 (Dec. 23, 2014).

[378] *See, e.g.,* 2014 Pew Study at 13.

18(b)(1) Timing of Disclosures

18(b)(1)(i) General

The Bureau's Proposal

As discussed above, § 1005.7(b) currently requires financial institutions to provide certain initial disclosures when a consumer contracts for an EFT service or before the first EFT is made involving a consumer's account. The Bureau proposed in revised § 1005.18(b)(1)(i) that, in addition to the initial disclosures that are usually provided in an account's terms and conditions document pursuant to existing § 1005.7(b), a financial institution would also have to provide a consumer with certain fee-related disclosures before a consumer acquired a prepaid account. In the proposal, the Bureau explained its concerns as noted above that while some financial institutions were already providing limited disclosures to consumers prior to acquisition, consumers across a range of acquisition channels did not always have access to consistent and comprehensive information before selecting a prepaid account.

Based on its outreach and research, the Bureau explained in the proposal its understanding that some financial institutions were not disclosing the fees that consumers may find relevant to their acquisition decision until the account was purchased (or otherwise acquired), the packaging material was opened, and the consumer reviewed the enclosed account agreement document. To take just one example, one prepaid product the Bureau looked at imposed an inactivity fee after 90 days of no transactions, but this fee was not disclosed on an outward-facing external surface of the prepaid account access device's packaging material that was visible before purchase. Further, the Bureau expressed concern that new employees might have been receiving terms and conditions documents regarding payroll card accounts at the same time they received substantial other benefits-related paperwork, making the fees difficult for employees to comprehend while sorting through other important and time-sensitive documents. Similarly, certain providers of prepaid accounts online may have been presenting disclosures on their Web sites in a way that made it difficult for consumers to have the chance to review them prior to acquisition.

In the proposal, the Bureau stated its belief that, for several reasons, consumers in all acquisition scenarios would benefit from receiving these new pre-acquisition disclosures prior to contracting for an EFT service or before the first EFT was made involving the account, at which point they would receive the initial disclosures that § 1005.7(b) already requires.

First, the Bureau believed that pre-acquisition disclosures could limit the ability of financial institutions to obscure key fees. For example, many participants in the Bureau's consumer pre-proposal consumer testing reported incurring fees that they did not become aware of until after they purchased their prepaid account.[379] 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 disclosed before they acquired the accounts.[380] The Bureau believes that its pre-acquisition disclosure regime will reduce the likelihood that these problems recur.

Second, the Bureau believed that, 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. The Bureau recognized 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 believed, however, that even in this scenario, students 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 believed that both the short and long form disclosures could inform the way in which these consumers decide to use the product once they acquired it.

Third, the Bureau believed that consumers could use their prepaid account for an extended period of time and potentially incur substantial fees over that time. For example, the Bureau noted that, during its pre-proposal consumer testing, participants indicated that they tend to use a given prepaid account, 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, paying whatever fees are incurred in the course of doing so. Other research is consistent. Specifically, the Bureau cited to one study that indicated 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.[381] Thus, the Bureau believed that whatever disclosure information a consumer used 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.

Regulation E, however, currently only provides for initial disclosures to be delivered at the time a consumer contracts for an EFT service or before the first EFT is made involving a consumer's account. The Bureau was concerned that, in the prepaid account context, this might sometimes be too late. With prepaid accounts, consumers often contract for an EFT service when acquiring the prepaid account and completing an initial load. The Bureau was concerned that, under the timing requirements for initial disclosures in § 1005.7, consumers were receiving fee-related disclosures too late to use them in their decision-making and comparison-shopping. The Bureau therefore proposed § 1005.18(b)(1)(i), which would have required a financial institution, in most cases, to provide the short form and long form disclosures before a consumer acquired a prepaid account.

The Bureau also proposed to add comment 18(b)(1)(i)–1, which would have provided examples of what would and would not qualify as providing disclosures pre-acquisition in the bank branch and payroll contexts. Proposed comment 18(b)(1)(i)–2 would have provided further explanation regarding circumstances when short form and long form disclosures would have been 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).

Comments Received

As with the timing of acquisition of a government benefit account, discussed in the section-by-section analysis of § 1005.15(c) above, the Bureau received numerous comments requesting that it provide further clarification on the meaning of the term acquisition in the payroll card context.

A number of commenters urged that, as with government benefit accounts, acquisition in the payroll card account context should be defined as the point at which the consumer chooses to receive wages via a payroll card account. These commenters included

[379] *See* ICF Report I at 7.

[380] *See id.*

[381] 2012 FRB Kansas City Study at 40.

issuers, program managers, employers that use payroll card accounts, a think tank, and trade associations representing the prepaid industry and payroll and human resource professionals. The commenters argued in support of defining acquisition as the point of consumer choice because it has already been adopted in several states' wage and hour laws, emphasizing that those laws have the same purpose as this rule: to ensure that employees are aware that they have options with regard to how they get paid. The commenters argued that alternative approaches—for example, defining acquisition as the point at which an employee takes physical possession of a payroll card—could cause significant disruption to current industry practice. Under current practice, they asserted, an employee may arrive on the first day of work and receive a package containing an inactive payroll card account, disclosures related to that account, and additional information regarding payroll, benefits, and other work-related issues. According to commenters, this practice is beneficial to employees, as an employee is more likely to be engaged in the on-boarding process and to ask questions about the payroll card on that first day than at some later time, so distributing the card and disclosures together in that circumstance maximizes the chances that the employee will review the disclosures and ask related questions. Further, these commenters asserted, an employee who possesses a physical payroll card has at least one way of receiving his pay. If he chooses the payroll card, they argued, he will be paid quickly and without much hassle, in contrast to paper checks, which can take time to clear and cost money to cash or deposit, or direct deposit, which requires the employee to submit additional information to the employer in order to set up.

One employer that uses payroll card accounts to distribute wages to its employees argued that acquisition should mean either the point at which a consumer affirmatively chooses to receive wages via a payroll card account, or the point at which a consumer fails to make a choice from among a previously-presented list of available payment options. According to this commenter, some employers provide payroll cards as the default payment option if an employee fails to affirmatively elect a payment option. This practice, the commenter maintained, should be allowed to continue so long as the employee is notified (and where permitted by State law).

On the other hand, a number of consumer groups stated that under current payroll card disbursement processes, there have been continuing reports of employers steering employees to select payroll card accounts as their payment method. Such reports, they maintained, show that current methods for distributing payroll cards or disclosures do not sufficiently ensure that employees have the time and information they need to evaluate or choose an alternative payment method. Relatedly, two consumer groups also argued that employees should be given a minimum number of days (seven, according to one commenter, and 30, according to the other) before they are required to select a method of payment. Other commenters did not suggest a specific point in time for defining acquisition. Rather, they urged the Bureau to define acquisition in a way that ensures employees receive the pre-acquisition disclosures earlier than they currently receive the initial account opening disclosures pursuant to § 1005.7.

With respect to online acquisition, a digital wallet provider argued that the point of acquisition for a digital wallet should be the point at which the consumer's account first holds a balance, not the point at which the consumer sets up or opens the account. Prior to the point at which the account holds a balance, the commenter argued, the pre-acquisition disclosures are irrelevant and may confuse consumers and cause them to abandon the online sign-up process. In addition, the commenter urged the Bureau to revise proposed comment 18(b)(1)(i)–2 to allow digital wallet providers to collect personally identifiable information before providing the disclosures. The commenter noted that these providers have to collect certain information in order to open the account. In a similar vein, a program manager asked the Bureau to clarify that the collection of certain personally identifiable information from a consumer does not by itself constitute ''acquisition.'' The commenter provided the example of an individual who goes online and submits her name and address in order to receive more information about a prepaid product by mail. The commenter was concerned that proposed comment 18(b)(1)(i)–2 could be read to require the financial institution to provide the short and long form disclosures before the consumer submitted this information, even if the consumer was providing the information on a third-party Web site while seeking information about multiple prepaid account products.

Also with respect to online acquisition of accounts, a consumer group commenter asked the Bureau to clarify that consumers must be shown both the short form and long form prior to acquiring the account, not just provided a link to them. The commenter argued that there was a lack of clarity in proposed comment 18(b)(1)(i)–2 around this point, since the comment both states that the consumer should not be able to easily bypass the disclosures, and that the financial institution can include a link to the long form on the same Web page as it discloses the short form.

The Final Rule

For the reasons set forth herein, the Bureau is adopting § 1005.18(b)(1)(i) largely as proposed, with a technical revision. The Bureau is also adopting proposed comments 18(b)(1)(i)–1 and –2 with several revisions. First, the Bureau has added guidance in comment 18(b)(1)(i)–1 to clarify that for purposes of § 1005.18(b)(1)(i), a consumer acquires a prepaid account by purchasing, opening, or choosing to be paid via a prepaid card. Second, the Bureau has added clarification to comment 18(b)(1)(i)–1.ii to explain that, in the context of payroll card accounts, short form and long form disclosures are provided pre-acquisition if they were provided before a consumer chose to receive wages via a payroll card. Third, the Bureau has revised comment 18(b)(1)(i)–2 to clarify that a consumer who goes online to obtain more information about a prepaid account does not acquire a prepaid account by providing personally identifiable information in the process. The comment also provides additional examples of when a consumer who acquires a prepaid account electronically receives the short form and long comments for clarity and consistency.

The Bureau is adopting § 1005.18(b)(1)(i), as well as § 1005.18(b)(1)(ii) and (iii) discussed below, pursuant to its authority under EFTA sections 904(a) and (c), and 905(a), and section 1032(a) of the Dodd-Frank Act. As discussed above, the Bureau believes that adjustment of the timing and fee requirements 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 revision will assist consumers' understanding of the terms

and conditions of their prepaid accounts.

Specifically, the Bureau has added language to comment 18(b)(1)(i)–1 stating that a consumer acquires a prepaid account by purchasing, opening, or choosing to be paid via a prepaid account. The Bureau agrees with commenters that additional clarity was needed around the use of the term acquisition in circumstances where the consumer does not *purchase* the prepaid account. Accordingly, the Bureau has included such terms as ''opening'' or ''choosing to be paid'' in the commentary to clarify the point in time at which consumers acquire a prepaid account in circumstances other than the retail scenario. The Bureau is finalizing comment 18(b)(1)(i)–1.i, which includes an example of the acquisition timing requirements in the context of a bank branch, largely as proposed, with minor revisions for conformity with changes elsewhere in § 1005.18(b).

For similar reasons, the Bureau has revised comment 18(b)(1)(i)–1.ii to clarify that, in the payroll card account context, a consumer who is provided with a payroll card and the disclosures required by § 1005.18(b) at the time he or she learns that he or she can receive wages via a payroll card account, but before the consumer chooses to receive wages via a payroll card account, is provided with the disclosures prior to acquisition. The final comment explains that, if a consumer receives the disclosures after the consumer receives the first payroll payment on the payroll card, those disclosures were provided post-acquisition, in violation of § 1005.18(b)(1)(i).

As above with respect to the timing of acquisition of a government benefit card, the Bureau has attempted to strike a balance that ensures that employees receive the new disclosures early enough to inform their payment choices, thereby furthering the goals of the compulsory use prohibition in § 1005.10(e)(2), while minimizing the potential disruption to current employer practices. Further, as discussed in the section-by-section analysis of § 1005.10(e)(2) above, the Bureau believes it is important that consumers have a choice with respect to how they receive their wages or salary. Accordingly, the Bureau believes it is appropriate to adopt a rule requiring financial institutions to provide their new disclosures before the consumer chooses a method of payment. Under the final rule, therefore, consumers must receive both the short form and long form disclosures (which include on the short form disclosure a notice informing consumers they have other options besides the payroll card account to receive their wages) before they choose the payment method that is best for them.

The Bureau declines to require a mandatory waiting period between the time consumers receive the disclosures and the time they are required to elect a payment method, for the reasons set forth in the section-by-section analyses of §§ 1005.10(e)(2) and 1005.15(c) above. Specifically, the Bureau does not believe that it is necessary at this time to specify a single time period that would apply in all enrollment scenarios.

Further, the Bureau is aware that, as noted by an employer commenter and as discussed in the section-by-section analysis of § 1005.10(e)(2) above, consumers are sometimes given a choice between two or more payment alternatives, but may fail to indicate their preference. Depending on the facts and circumstances—for example, the date by which the consumer has to be paid her wages under State law—it may be reasonable for a financial institution or other person in this scenario to employ a reasonable default enrollment method. However, the Bureau is concerned about reports from consumer group commenters of employees being coerced to accept payroll card accounts as their default method of receiving wages and intends to monitor the payroll card account market for compliance with the compulsory use prohibition and will consider further action in a future rulemaking if necessary. As stated above, the Bureau also believes that by requiring the disclosures to be provided before a consumer acquires a prepaid account, the final rule will help ensure that all prepaid consumers, including employees receiving payroll card accounts, have the information they need to evaluate the prepaid account option (or options) available to them.

With respect to proposed comment 18(b)(1)(i)–2, regarding the timing for delivery of disclosures provided electronically, the Bureau understands that the digital wallet acquisition process may in some respects be different than the acquisition process for other prepaid accounts. However, the Bureau does not believe that this warrants different treatment for purposes of the timing requirement for delivery of pre-acquisition disclosures. In particular, the Bureau notes that the fact that a digital wallet consumer could receive the disclosures before the wallet holds any funds is not unique to digital wallets. Indeed, to qualify as a prepaid account, an account must be issued on a prepaid basis *or* be capable of being loaded with funds after acquisition.[382] The Bureau believes that it is important that consumers are informed of the fees and other key terms that will apply to their prepaid account before they open or purchase that account, whether that account is accessed by a physical prepaid card, a digital wallet, or through some other means. Furthermore, the Bureau understands that digital wallet providers presently provide some disclosures (for instance, user agreements and privacy policies) prior to a consumer opening an account. Thus, the Bureau does not believe that requiring digital wallet providers to provide the short form and long form disclosures before the consumer opens the account should be problematic for financial institutions or confusing to consumers.

Next, the Bureau has removed the reference in proposed comment 18(b)(1)(i)–2 to a consumer's provision of personally identifiable information. The Bureau understands that there may be scenarios in which a consumer provides personal information, such as name or address, in order to obtain more information about a particular product. Likewise, there could be instances where a consumer provides personal information for one purpose online, and that information is then used for other purposes, such as to market a prepaid account to the consumer. In either scenario, the consumer did not provide the personal information in order to acquire the prepaid account. Final comment 18(b)(1)(i)–2, therefore, no longer states that a consumer who receives the disclosures after the consumer provides personally identifiable information has received the disclosures post-acquisition. Instead, the comment states that the disclosures required by § 1005.18(b) may be provided before or after a consumer has initiated the acquisition process. If the disclosures are presented after a consumer initiates the acquisition process such disclosures are made pre-acquisition if the consumer receives them before choosing to accept the prepaid account.

Finally, with respect to consumer groups' requests that the Bureau clarify that a consumer must be shown both the short form and long form disclosures prior to a consumer's acquisition of a prepaid account through electronic means, the Bureau has added several examples in final comment 18(b)(1)(i)–2 to illustrate disclosure methods that would comply with final § 1005.18(b)(1)(i). In the first example, set forth in new paragraph i, the

[382] *See* final § 1005.2(b)(3)(i)(D)(*1*).

financial institution presents the short form, long form, and § 1005.18(b)(5) disclosures on the same Web page, which the consumer must view before choosing to accept the prepaid account. In the second example, set forth in new paragraph ii, the financial institution presents the short form and § 1005.18(b)(5) disclosures on one Web page, together with a link that directs the consumer to a separate Web page containing the long form disclosure, which the consumer must also view before choosing to accept the prepaid account. Finally, in the third example, set forth in new paragraph iii, the financial institution presents on a Web page the short form and § 1005.18(b)(5) disclosures, followed by the initial disclosures required by § 1005.7(b) containing the long form disclosure in accordance with final § 1005.18(f)(1), on the same Web page. The financial institution includes a link, after the short form disclosure or as part of the statement required by § 1005.18(b)(2)(xiii), that directs the consumer to the section of the initial disclosures containing the long form disclosure. The consumer must view this Web page containing the two disclosures prior to choosing to accept the prepaid account.

These comments are intended to clarify that a consumer does not receive electronic disclosures prior to acquisition if the consumer is able to bypass some or all of the § 1005.18(b) disclosures before choosing to accept the prepaid account. The Bureau agrees with the consumer group commenter that language in the proposed comment regarding whether or not the consumer could review unrelated information before reviewing the long form disclosure on a separate Web page potentially contradicted this general principle. Accordingly, the Bureau has removed that language from the commentary to the final rule.

In addition to the revisions discussed above, the Bureau is finalizing certain other minor changes to comments 18(b)(1)(i)–1 and –2 for clarity and consistency.

18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Locations

The Bureau's Proposal

The Bureau proposed an adjustment to the general pre-acquisition timing requirement where consumers acquired prepaid accounts in retail stores. Proposed § 1005.18(b)(1)(ii) would have permitted financial institutions to employ an alternative method of delivering the long form disclosure. Under this alternative timing regime, a financial institution would have been permitted to provide the long form disclosure in writing after the consumer acquired a prepaid account as long as three conditions were met, as discussed below.

In the proposal, the Bureau stated its belief that in many cases it was not feasible for financial institutions that offered prepaid accounts in retail stores to provide printed long form disclosures prior to acquisition. For example, due to size and space limitations on standard J-hook display racks, the Bureau believed that many financial institutions would not have been able to present both the short form and long form disclosures required by proposed § 1005.18(b)(2)(i) and (ii) on the packaging without overhauling the packaging's design or otherwise adjusting the relevant retail space.

Nevertheless, the Bureau believed it was 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 have permitted a financial institution to provide the long form disclosure after a consumer acquired a prepaid account in person in a retail store, as long as three conditions were met. Proposed § 1005.18(b)(1)(ii)(A) would have set forth the first condition: That the access device for the prepaid account available for sale in a retail store had to be inside of a packaging material. This condition would have applied even if the product, when sold, was only a temporary access device. Proposed § 1005.18(b)(1)(ii)(B) would have set forth the second condition: That the short form disclosures required by proposed § 1005.18(b)(2)(i) had to 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 believed that financial institutions offering the majority of current prepaid accounts at retail would be able to satisfy this condition without altering the structure of the existing packaging.

The third condition, set forth in proposed § 1005.18(b)(1)(ii)(C), would have required that a financial institution include the telephone number and URL a consumer could use to access the long form disclosure while in a retail store on the short form disclosure, as required by proposed § 1005.18(b)(2)(i)(B)(*11*). The Bureau believed that consumers 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 believed that many consumers had the ability to access a Web site through the URL that would be listed on the short form disclosure when shopping for a prepaid account, but nonetheless also proposed that when a financial institution did not disclose the long form disclosure before a consumer acquired a prepaid account, the financial institution had to also make the long form disclosure available to a consumer by telephone. The Bureau acknowledged that it might be complicated for financial institutions to provide the long form disclosure by telephone. Further, the Bureau acknowledged that it may be harder for a consumer to understand the information in the long form disclosure when delivered orally. Nevertheless, the Bureau believed that if a consumer took the affirmative step to request additional information about a prepaid account by telephone when shopping in a retail store, it may have been more likely that the consumer was seeking out specific information not included on the short form disclosure, and that such a consumer would therefore be less likely to suffer from information overload.

Proposed comment 18(b)(1)(ii)–1 would have provided guidance on the definition of retail store. Specifically, proposed comment 18(b)(1)(ii)–1 would have explained that, for purposes of the proposed requirements of § 1005.18(b)(1)(ii), a retail store was a location where a consumer could obtain a prepaid account in person and that was operated by an entity other than a financial institution or an agent of the financial institution. Proposed comment 18(b)(1)(ii)–1 would have further clarified that a bank or credit union branch was not a retail store, but that drug stores and grocery stores at which a consumer can acquire a prepaid account could be retail stores. Proposed comment 18(b)(1)(ii)–1 would have also clarified that a retail store that offered 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 would need to be provided pre-acquisition pursuant to proposed § 1005.18(b)(1)(i) in such settings.

The Bureau believed that if a financial institution was the sole provider of prepaid accounts in a given retail store, or was otherwise an agent of the financial institution, then it would be easier for the financial institution to manage the distribution of disclosures to consumers. The Bureau believed 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 sought comment on whether agents of the financial institution faced space constraints in retail stores that would have made it difficult to provide the short form and long form disclosures pre-acquisition.

Proposed comment 18(b)(1)(ii)–2 would have explained that disclosures were considered to have been provided post-acquisition if they were inside the packaging material accompanying a prepaid account access device that a consumer could not see or access before acquiring the prepaid account, or if it was not readily apparent to a consumer that he or she had the ability to access the disclosures inside of the packaging material. Proposed comment 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 18(b)(1)(ii)–3 would have explained that a payroll card account offered to and accepted by consumers working in retail stores would not have been considered a prepaid account acquired in a retail store for purposes of proposed § 1005.18(b)(1)(ii), and thus, a consumer would have had 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 explained that it did not believe that there were space constraints involved in offering payroll card accounts to retail store employees. Finally, proposed comment 18(b)(1)(ii)–4 would have clarified that pursuant to proposed § 1005.18(b)(1)(ii)(C), a financial institution could make the long form accessible to a consumer by telephone and by a Web site by, for example, providing the long form disclosure by telephone using an interactive voice response system or by using a customer service agent.

Comments Received

Industry commenters overwhelmingly supported the proposed retail store exception. Despite this general support, however, a large number of industry commenters, including issuing banks, program managers, trade associations, a payment network, and an advocacy organization advocating on behalf of business interests, generally opposed the proposition that neither financial institutions nor their agents could qualify for the proposed retail store exception. These commenters argued that the exclusion of financial institutions and their agents was unnecessary and did not reflect compliance and market realities. Specifically, the commenters asserted that the location of acquisition should not dictate the type of disclosure the consumer receive since, they said, the constraints of providing the long form disclosure in any in-person environment are the same. Thus, they argued, there is no basis for distinguishing between large retailers that carry multiple prepaid account programs and small retailers, who may have no choice but to carry only one financial institution's products, nor between retail stores and bank and credit union branches who may also sell prepaid accounts on J-hooks or in J-hook-style packaging. One program manager argued that the Bureau's failure to distinguish in this context between banks that issue prepaid accounts and smaller financial institutions, like credit unions or smaller banks, that only sell prepaid accounts issued by others, is inequitable in that it places a greater compliance burden on smaller institutions than comparable retailers would face. These commenters urged the Bureau to expand the application of the retail store exception to more or all in-person sales of prepaid accounts.

A subset of these commenters objected specifically to the proposed commentary stating that an entity is an agent of the financial institution for purposes of proposed § 1005.18(b)(1)(ii) if it exclusively sells one financial institution's prepaid account products. These commenters argued that agency status should be an issue determined under State law. They explained that, under several States' laws, a financial institution must appoint any store that sells its products as its agent, which would make such store ineligible for the retail store exception as proposed. Commenters also argued that the exclusive retailer exclusion would be difficult to enforce. For example, they noted that retailers may not be aware that they were selling prepaid accounts from only one financial institution, especially as retailers often deal with a program manager rather than directly with the financial institution itself. The commenters also listed several circumstances under which a retail store could unwittingly become disqualified from the proposed retail store exception by inadvertently offering only that financial institution's prepaid accounts, including, for example, if a retail store offers two financial institutions' prepaid accounts, but the supply of one financial institution's products runs out.

Few consumer groups commented on this issue, but those that did, along with the office of a State Attorney General, opposed the retail store exception generally. They urged the Bureau to instead require that the long form disclosure be provided prior to acquisition in all scenarios because, they argued, consumers are more likely to pay attention to information disclosed on a physical form than on a Web site. They further noted that financial institutions could develop viable alternative disclosure methods that would allow them to disclose physical copies of both the short form and the long form prior to acquisition as part of the prepaid card package—for example, the long form could be disclosed under a flap that could be secured to the package with a Velcro tab. These commenters did not comment, however, on the types of entities that should qualify for the retail store exception if the Bureau were to adopt such a regime in the final rule.

The Final Rule

For the reasons set forth herein, the Bureau is adopting § 1005.18(b)(1)(ii) with modifications to the situations that qualify for the alternative timing regime for delivery of the long form disclosure for prepaid accounts sold at retail. In general, under the final rule, the alternative timing regime applies when a consumer acquires a prepaid account in person at a retail *location,* without regard to whether the location is operated by an agent of the financial institution. The final rule also clarifies, however, that financial institutions selling prepaid accounts in their own branches qualify for the exception only with respect to prepaid accounts that they do not themselves issue. Finally, the Bureau has made several minor revisions to § 1005.18(b)(1)(ii) and its commentary for clarity and consistency.

The Bureau has considered whether, as some consumer group commenters suggested, it might be more beneficial for consumers to see all of a prepaid account's fees pre-acquisition for prepaid accounts in all acquisition scenarios including at retail to avoid putting the burden on consumers to seek out additional information. The Bureau declines, however, to revise the proposed alternative timing regime for prepaid accounts sold at retail in this way, for the reasons discussed below. The Bureau also declines to permit post-acquisition disclosure of the long form in all in-person acquisition scenarios, as some industry commenters requested.

The Bureau continues to believe that consumers benefit from receiving both the short form and the long form disclosures in writing prior to acquisition, because the disclosures serve different but complementary goals. See the section-by-section analysis of § 1005.18(b) above for a detailed discussion of the reasons the Bureau is generally requiring that financial institutions provide both the short form and the long form disclosures pre-acquisition.

However, the Bureau is cognizant of the potentially significant cost to industry of providing the long form disclosure prior to acquisition at retail and the packaging adjustments that including such a disclosure would likely require based on the space constraints for products sold at retail. Specifically, commenters have confirmed the Bureau's understanding that, if it were to finalize a requirement that the long form disclosure be provided in writing prior to acquisition of a prepaid account in a retail environment, financial institutions would have to undertake a significant overhaul of current packaging designs.[383] As such, the Bureau continues to believe that such packaging adjustments would result in significant expense to industry and would likely increase the cost of prepaid accounts and limit the diversity of options available to consumers shopping for prepaid accounts at retail (assuming retailers maintain the same overall space for the display and sale of all prepaid accounts that they have now).

To balance these considerations, the Bureau has revised § 1005.18(b)(1)(ii) and its commentary to broaden in certain respects the type of entity that qualifies for the retail location exception set forth in § 1005.18(b)(1)(ii). Under final § 1005.18(b)(1)(ii), therefore, a financial institution is not required to provide the long form disclosures before a consumer acquires a prepaid account in person at a retail location; provided the following conditions are met: (A) The prepaid account access device is contained inside the packaging material; (B) the short form disclosures are provided on or are visible through an outward-facing, external surface of a prepaid account access device's packaging material; (C) the short form disclosures include the information set forth in final § 1005.18(b)(2)(xiii) that allows a consumer to access the long form disclosure by telephone and via a Web site; and (D) the long form disclosures are provided after the consumer acquires the prepaid account.

The Bureau is persuaded that, in certain cases, the constraints that apply in retail stores—limited space, distribution of disclosures by someone other than the financial institution that issues the prepaid account—could also apply in the context of other in-person acquisition scenarios, such as in the branches of banks and credit unions that sell another financial institution's prepaid accounts. Accordingly, the Bureau is revising § 1005.18(b)(1)(ii) and its commentary to broaden the scope of the retail exception by referring to a retail *location* rather than a retail *store.* The Bureau does not believe that this shift in approach undermines the consumer protections offered by the Bureau's pre-acquisition disclosure regime generally. Rather, the Bureau continues to believe that its alternative timing regime, with certain modifications described below, strikes an appropriate balance by providing consumers with—or with access to—important disclosures before acquiring a prepaid account while recognizing the packaging and other constraints faced by financial institutions when selling prepaid accounts at retail. Further, the Bureau notes that the conditions placed on a financial institution's ability to use the exemption—including that the short form disclosure appear on the outside of the packaging containing the card and list a telephone number and Web site URL the consumer can use to access the long form disclosure[384]—should ensure that most consumers have access to comprehensive fee information while they shop.

The Bureau has revised comment 18(b)(1)(ii)–1 to remove the commentary stating that a retail store must be operated by an entity other than a financial institution or a financial institution's agent, and giving specific examples of what type of entities would or would not qualify as retail stores. Instead, final comment 18(b)(1)(ii)–1 states that, for purposes of final § 1005.18(b)(1)(ii), a retail location is a store or other physical site where a consumer can purchase a prepaid account in person and that is operated by an entity other than the financial institution that issues the prepaid account.

The Bureau continues to believe, however, that a financial institution selling its own prepaid accounts does not face the same challenges as in other retail locations, and in particular that it is far less difficult for such a financial institution to manage the distribution of disclosures to consumers. In addition, the Bureau believes it is unlikely that any financial institution selling its own prepaid accounts in its own branches also offers prepaid accounts issued by other financial institutions. The Bureau also understands, as stated in the proposal, that financial institutions selling their own prepaid accounts may be less dependent on the J-hook infrastructure to market their products to consumers. Thus, the Bureau believes it is still appropriate to exclude from the retail location exception financial institutions that sell their own prepaid accounts. Accordingly, the Bureau has revised comment 18(b)(1)(ii)–1 to clarify that a branch of a financial institution that offers its own prepaid accounts is not a retail location with respect to those accounts and, thus, both the short form and the long form disclosure must be provided pre-acquisition pursuant to the timing requirements set forth in final § 1005.18(b)(1)(i).

Next, the Bureau is adopting new § 1005.18(b)(1)(ii)(D) to make clear that, to qualify for the retail location exception, the financial institution must provide the long form disclosure after the consumer acquires the prepaid account. Proposed § 1005.18(b)(1)(ii) would have permitted a financial institution, under certain conditions, to provide the long form disclosure after acquisition, but left open a possible interpretation that the financial institution could forego delivering the long form disclosure altogether, which was not the Bureau's intent. For clarity, therefore, the Bureau is adopting § 1005.18(b)(1)(ii)(D) to make delivery of the long form disclosure after acquisition an explicit requirement in § 1005.18(b)(1)(ii). The new provision does not set forth a specific time by which the long form disclosure must be provided after acquisition. In practice, however, the Bureau expects that compliance with final § 1005.18(b)(1)(ii)(D) will typically be accomplished in conjunction with compliance with final § 1005.18(f)(1), which provides that a financial institution must include, as part of the initial disclosures given pursuant to § 1005.7, all of the disclosures required by § 1005.18(b)(4). The initial disclosures required by § 1005.7 must be provided prior to a consumer contracting for an EFT service or before the first EFT involving the account.

Relatedly, the Bureau has removed the portion of proposed comment

[383] As some consumer group commenters recognized, the only way a printed long form could be incorporated into the current packaging design is by adding additional material and functionality to the package. As the Bureau noted in the proposal, adding material to prepaid card packaging could limit the number of packages retailers could sell on J-hook displays. *See* 79 FR 77102, 77153 (Dec. 23, 2014).

[384] *See* final § 1005.18(b)(1)(ii)(A) through (D).

18(b)(1)(ii)–2 that would have provided an example of when prepaid disclosures provided inside packaging material are provided post-acquisition, because it believes the other provisions of the rule make clear that, other than as set forth in the retail location exception in § 1005.18(b)(1)(ii), the short form and long form disclosures must both be provided to a consumer prior to acquiring the prepaid account. The Bureau is otherwise finalizing comment 18(b)(1)(ii)–2, as well as comments 18(b)(1)(ii)–3 and –4, generally as proposed with minor modifications for clarity and consistency, as well as conforming changes to reflect the numbering changes elsewhere in § 1005.18(b).

18(b)(1)(iii) Disclosures for Prepaid Accounts Acquired Orally by Telephone

Similar to the proposed alternative for retail stores, the Bureau proposed § 1005.18(b)(1)(iii) to provide that before a consumer acquired a prepaid account orally by telephone, a financial institution would have to disclose orally the short form information that would have been required by proposed § 1005.18(b)(2)(i). Proposed § 1005.18(b)(1)(iii) would have further stated that a financial institution could provide a written or electronic long form disclosure required by proposed § 1005.18(b)(2)(ii) after a consumer acquired a prepaid account orally by telephone if the financial institution communicated to a consumer orally, before a consumer acquired the prepaid account, that the information required to be disclosed by § 1005.18(b)(2)(ii) was available orally by telephone and on a Web site. The Bureau believed that as long as consumers were made aware of their ability to access the information contained in the long form disclosure, they would be able to get enough information to make an informed acquisition decision. Those who wished to learn more about the prepaid account could do so, and financial institutions would not be unduly burdened by having to provide the long form disclosure orally to all consumers who acquire prepaid accounts by telephone. A version of the long form disclosure, however, would have still been required to be provided after acquisition in the prepaid account's initial disclosures, pursuant to proposed § 1005.18(f).

Proposed comment 18(b)(1)(iii)–1 would have explained that, for purposes of proposed § 1005.18(b)(1)(iii), a prepaid account was considered to have been acquired orally by telephone when a consumer spoke to a customer service agent or communicated with an automated system, such as an interactive voice response system, to provide personally identifiable payment information to acquire a prepaid account, but would have clarified that prepaid accounts acquired using a mobile device without speaking to a customer service agent or communicating with an automated system were not considered to have been acquired orally by telephone. The Bureau believed that, if a consumer used a smartphone to access a mobile application to acquire a prepaid account, and did not receive disclosures about the prepaid account orally, the disclosures could be provided electronically pursuant to proposed § 1005.18(b)(3)(i)(B). The Bureau believed that in such a scenario the logistical challenges justifying an alternative timing requirement for accounts acquired orally by telephone were not present.

Proposed comment 18(b)(1)(iii)–2 would have explained how disclosures provided orally could comply with the pre-acquisition timing requirement in proposed § 1005.18(b)(2)(i). Specifically, proposed comment 18(b)(1)(iii)–2 would have clarified 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 disclosures required under proposed § 1005.18(b)(2)(i) over the telephone after a consumer had initiated the purchase of a prepaid account by calling the financial institution, but before a consumer agreed to acquire the prepaid account. Proposed comment 18(b)(1)(iii)–2 would have also explained that although the disclosure required by proposed § 1005.18(b)(2)(ii) was not required to be given pre-acquisition when a consumer acquired a prepaid account orally by telephone, a financial institution would still have to communicate to a consumer that the long form disclosure was available upon request, either orally by telephone or on a Web site. Finally, the proposed comment would have clarified 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 EFT was made from a consumer's prepaid account.

One consumer group commenter urged the Bureau to provide consumers who acquire a prepaid account by telephone or electronically the option of receiving written disclosures by mail upon request. The Bureau notes that consumers acquiring prepaid accounts through these methods must still receive the initial disclosures required by § 1005.7, which, as modified by final § 1005.18(f)(1), must include all of the information required to be disclosed in its pre-acquisition long form disclosure pursuant to § 1005.18(b)(4). Accordingly, the Bureau does not believe it is necessary to separately provide consumers the right to request a written copy of information they are already required to receive under existing § 1005.7 and final § 1005.18(f)(1).

The Bureau is therefore adopting § 1005.18(b)(1)(iii) and its related commentary largely as proposed, with a few minor revisions. Under final § 1005.18(b)(1)(iii), a financial institution is not required to provide the long form disclosure required by § 1005.18(b)(4) before a consumer acquires a prepaid account orally by telephone if the following conditions are met: (A) The financial institution communicates to the consumer orally, before the consumer acquires the prepaid account, that the long form disclosure is available both by telephone and on a Web site; (B) the financial institution makes the long form disclosure available both by telephone and on a Web site; and (C) the long form disclosures are provided after the consumer acquires the prepaid account.

The Bureau continues to believe that it is appropriate to modify the proposed general pre-acquisition disclosure requirements when a consumer acquires a prepaid account orally by telephone, and that requiring disclosure of 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. The Bureau believes that, since the final rule mandates that consumers be made aware of their ability to access the information contained in the long form disclosure, consumers will have access to enough information to make an informed acquisition decision.

As stated above, the Bureau is finalizing several modifications to § 1005.18(b)(1)(iii) and its commentary. First, the Bureau has added language to comment 18(b)(1)(iii)–2 to clarify that a financial institution can meet the requirements of final § 1005.18(b)(1)(iii) by providing the required disclosures over the telephone using an interactive voice response or similar system. Second, for the same reason the Bureau is adopting new § 1005.18(b)(1)(ii)(D) above, the Bureau is adopting new § 1005.18(b)(1)(iii)(C) to clarify that, to qualify for the telephone exception, the financial institution would have to provide the long form disclosure after

the consumer acquires the prepaid account. Again, while this new provision does not set forth a specific time by which the long form disclosure must be provided after acquisition, the Bureau expects that compliance with § 1005.18(b)(1)(iii)(C) will typically be accomplished through delivery of the long form disclosure as part of the initial disclosures required by § 1005.7, in accordance with final § 1005.18(f)(1). Finally, the Bureau has made certain other revisions to § 1005.18(b)(1)(iii) and its commentary to streamline and clarify the language therein.

18(b)(2) Short Form Disclosure Content

Proposed § 1005.18(b)(2) would have consisted solely of a heading, with the substantive content requirements for the Bureau's proposed prepaid account pre-acquisition disclosure regime located under proposed § 1005.18(b)(2)(i) for the short form disclosure and proposed § 1005.18(b)(2)(ii) for the long form disclosure. The regulatory text of proposed § 1005.18(b)(2)(i) would have consisted of a general statement that would have required that the fees, information, and notices that would have been set forth in the regulatory provisions under proposed § 1005.18(b)(2)(i) be provided in the short form disclosure.

The Bureau has relocated the regulatory text and commentary from proposed § 1005.18(b)(2)(i) to the final rule in § 1005.18(b)(2) (with certain modifications as discussed below).[385] In keeping with this relocation, the discussion of the Bureau's proposal and comments received regarding the regulatory text and comments of proposed § 1005.18(b)(2)(i) are incorporated into this section-by-section analysis of § 1005.18(b)(2) (except the overall description of the proposed short form disclosure, which can be found in the section-by-section analysis of § 1005.18(b) above).

The Bureau's Proposal

Proposed § 1005.18(b)(2)(i) would have required that, before a consumer acquires a prepaid account, a financial institution provide a short form disclosure containing specific information about the prepaid account, including certain notices, fees, and other information, as applicable.

Proposed comment 18(b)(2)(i)–1 would have explained what a provider should disclose on the short form when fees are inapplicable to a particular prepaid account product or are $0. Specifically, the proposed comment would have said 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 not applicable to a specific prepaid account. The proposed comment would have also provided 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 have been 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 have further clarified, however, that if 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, it should still list ''ATM withdrawal (in-network)'' and ''ATM withdrawal (out-of-network)'' on the short form disclosure and state ''not offered'' or ''N/A.'' The Bureau believed it important that the static portion of the short form disclosure list identical account features and fee types across all prepaid account products, to create standardization in order to enable consumers to quickly determine and compare the potential cost of certain offered features.

The Bureau also proposed 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 have explained that no more than two fees may be disclosed 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 (that is, the per purchase fee, the ATM withdrawal fee, and the ATM balance inquiry fee), and that only one fee may be disclosed for each fee type required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*1*), (*4*), (*6*), (*7*), and (*8*) (that is, the periodic fee, the cash reload fee, the customer service fee, the inactivity fee, and the incidence-based fees). The proposed comment would have clarified, however, that proposed § 1005.18(b)(2)(i)(B)(*8*) would have required the disclosure of up to three additional fee types. Finally, the proposed comment would have provided the example that, 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. Finally, the proposed comment would have provided a cross-reference to proposed comment 18(b)(2)(i)(C)–1.

As the Bureau explained in the proposal, the Bureau believed that simplicity and clarity are important goals for the short form disclosure, particularly in light of the space constraints imposed in retail settings. Insofar as allowing complicated explanations and multiple different fees to be disclosed for a particular feature could disrupt those goals, the Bureau thus proposed 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. The Bureau noted that these limitations would only apply to the short form disclosure; the financial institution could use any other portion of the packaging material or Web site to disclose other relevant fees at its discretion, and would be required to disclose the other variations on the long form.

The Bureau also believed there was 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 proposed 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 also proposed to require disclosure of two fee values. The Bureau believed 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 believed including two per purchase fees would highlight for consumers that the fees for completing a transaction using a PIN versus the fee for using a signature could differ. Similarly, the Bureau believed 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 relevant network. The Bureau noted that in its pre-proposal consumer testing, some participants were

[385] See the section-by-section analysis of § 1005.18(b) above for a general discussion of the reorganization of the final rule.

confused about the meaning of an ATM network.

By contrast, the Bureau proposed to allow only one periodic fee and one cash reload fee to be listed in the top line of the short form. The Bureau acknowledged 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 believed consumers would benefit more from immediately seeing the two ways the per purchase and ATM withdrawal fees may vary.

Comments Received

Comments received regarding the Bureau's proposed pre-acquisition disclosing regime generally, including those regarding the short form disclosure as a whole, are addressed in the section-by-section analysis of § 1005.18(b) above. Comments received that address specific disclosure requirements in the short form disclosure are addressed in the section-by-section analysis that corresponds to each specific disclosure requirement. Comments received regarding proposed comment 18(b)(2)(i)–1 (regarding how to disclose features that are inapplicable or free) are discussed below.

Several industry commenters, including program managers, an issuing credit union, a payment network, and an industry trade association, recommended against requiring disclosure of inapplicable fees. They said such disclosures would take up valuable space on the short form and it would confuse consumers to inform them about fees and services that are not offered, especially for non-reloadable prepaid products and government benefits prepaid cards which, the commenters said, do not charge monthly, per purchase, or cash reload fees. Conversely, two consumer groups, a program manager, and an issuing bank supported the disclosure of inapplicable fees as providing a quick and accurate basis for comparison across prepaid accounts. Another program manager and issuing bank both supported the disclosure of inapplicable fees but recommended requiring ''not applicable'' instead of ''N/A'' to clarify to consumers that the service itself, not the fee, is inapplicable. One of the consumer groups said ''N/A'' was confusing and recommended disclosing ''not offered'' instead.

One issuing bank and an industry trade association recommended against disclosing when no fee is charged. The bank recommended this specifically for the fees that do not appear in the top line because it said they are not commonly charged and the space in the short form could be used for more commonly-charged fees. The bank recommended listing the required fees if there is a charge but, if there is no charge, permitting the issuer to decide what fee to display. A program manager recommended eliminating the ''$0'' fee requirement for government benefit accounts for fees that do not apply to such accounts.[386]

The Final Rule

As noted above, to simplify the structure of the final rule, the Bureau has modified proposed § 1005.18(b)(2) and (2)(i), to locate the content requirements for the short form disclosure in the final rule under § 1005.18(b)(2). Also, for reasons set forth below, the Bureau is adopting revisions to proposed comment 18(b)(2)(i)–1, renumbered as comment 18(b)(2)–1. Second, the Bureau is not finalizing proposed comment 18(b)(2)(i)–2 regarding the number of fees to disclose, as this comment would have repeated information found elsewhere in the final regulatory text and commentary. Finally, the Bureau is adopting new comment 18(b)(2)–2 regarding the prohibition on disclosure of finance charges in the short form.

The Bureau has made both substantive and technical modifications to comment 18(b)(2)–1 to clarify the explanation and examples in the proposed comment that required fees must always be disclosed in the short form—even when the financial institution does not charge a fee or does not offer the feature, in which case the financial institution would disclose ''$0'' or ''N/A,'' respectively, as applicable. Although some commenters opposed a requirement to disclose a fee when there is no charge or the feature is not offered, the Bureau is adopting this requirement in the final rule to preserve standardization among short forms such that consumers can see when a feature is offered for free or is not offered at all to better compare prepaid accounts and inform consumer purchase and use decisions. The Bureau recognizes that many payroll card accounts and government benefit accounts do not currently charge certain fees or offer certain features required to be disclosed in the short form, but is finalizing the rule as proposed to allow consumers to compare payroll card accounts or government benefit accounts with their own prepaid accounts or prepaid accounts they may acquire to receive their benefits or wages.

The Bureau's post-proposal consumer testing revealed that nearly all participants understood both ''N/A'' and ''not offered'' when disclosed in place of a required fee for features not offered by a financial institution.[387] However, in order to achieve a greater degree of standardization across short form disclosures, the Bureau is finalizing the rule to require disclosure of ''N/A,'' but not ''not offered,'' when a financial institution does not offer a feature for which a fee is required to be disclosed in the short form. The Bureau believes this single standardized approach is shorter, simpler, and clearer for consumers to use to compare fees and information in the short form across prepaid accounts. Thus, final comment 18(b)(2)–1 clarifies that ''N/A'' is the required disclosure when a financial institution does not offer a feature for which a fee is required to be disclosed in the short form.

The Bureau is adopting new comment 18(b)(2)–2, which clarifies that pursuant to new § 1005.18(b)(3)(vi), a financial institution may not include in the short form disclosure finance charges as described in Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61. The comment also cross-references new comment 18(b)(3)(vi)–1.

18(b)(2)(i) Periodic Fee

The Bureau's Proposal

Proposed § 1005.18(b)(2)(i)(B)(*1*) would have required 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. The proposal stated the provision was 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 have been required to disclose this fee in the top line of the short form disclosure.

The proposal set forth the following reasons for the Bureau's proposed

[386] The Bureau notes that for fees for features that are not available for such accounts, the disclosure made in the short form would be ''N/A'' not ''$0.''

[387] *See* ICF Report II at 17 and 27.

requirement that financial institutions disclose the presence or absence of a periodic fee as the first item in the short form. First, the Bureau's analysis of fee data indicated that many prepaid accounts charge a recurring fee, typically on a monthly basis. Second, the Bureau believed 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.[388] The Bureau therefore believed 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 believed 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, the Bureau's pre-proposal consumer testing showed that participants frequently cited periodic fees as one of the most important factors influencing their decision about which prepaid account to acquire.

Comments Received

No commenter opposed disclosure of the periodic fee, though an issuing bank requested that the Bureau permit disclosure in the short form of the conditions under which a financial institution may waive the periodic fee and many other commenters urged more generally to provide latitude to financial institutions to disclose conditions for waiver or reduction of all listed fees.[389] An office of a State Attorney General recommended that the Bureau ban periodic fees for payroll card accounts, but otherwise supported the disclosure required by proposed § 1005.18(b)(2)(i)(B)(*1*).

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(*1*), renumbered as § 1005.18(b)(2)(i), with minor technical modifications for conformity and clarity. Also, for the reasons set forth below, the Bureau is adopting comment 18(b)(2)(i)–1.

The Bureau is finalizing the requirement that financial institutions disclose the periodic fee as the first fee on the short form disclosure because it is a virtually universal charge and, even if a per purchase fee is incurred instead of the periodic fee, the Bureau continues to believe that consumers should be apprised of the trade-off between the two pricing schemes.

The Bureau agrees that it may be particularly important for consumers to be aware of waivers and discounts of the periodic fee, and thus is adopting a new provision in the final rule that permits financial institutions to disclose, in addition to the highest fee, conditions under which the periodic fee may vary. While final § 1005.18(b)(3)(i) requires disclosure of the highest fee when a fee can vary, final § 1005.18(b)(3)(ii) permits a financial institution to disclose a waiver of or reduction in the fee amount for the periodic fee in language lower down in the short form disclosure. See the section-by-section analysis of § 1005.18(b)(3) below for a discussion of the comments received and analysis leading to the adoption of this alternative for the periodic fee.

To clarify the specific applicability of final § 1005.18(b)(3)(i) and (ii) to the periodic fee disclosure required by final § 1005.18(b)(2)(i), the Bureau is adopting new comment 18(b)(2)(i)–1. Comment 18(b)(2)(i)–1 states that, if the amount of a fee disclosed on the short form could vary, the financial institution must disclose in the short form the information required by final § 1005.18(b)(3)(i). If the amount of the periodic fee could vary, the financial institution may opt instead to use an alternative disclosure pursuant to final § 1005.18(b)(3)(ii). The Bureau is adopting this comment to direct attention to the alternative disclosure of the periodic fee in the short form permitted by § 1005.18(b)(3)(ii).

With regard to the comment recommending that the Bureau ban the periodic fee for payroll card accounts, such a request is outside the scope of this rulemaking.

18(b)(2)(ii) Per Purchase Fee

Proposed § 1005.18(b)(2)(i)(B)(*2*) would have required disclosure of two fees for making a purchase using a prepaid account, both for when a consumer uses a PIN 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.

The proposal explained that, 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. The Bureau said that the impact of these fees could be substantial for consumers who make multiple purchases. Often these fees are charged when periodic fees are not, 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 believed 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. Proposed Model Forms A–10(a) through (d) would have disclosed the per purchase fees on the top line of the short form.

The Bureau's proposed rule further recognized 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 may sign for the transaction but does not need to enter his or her PIN code. The Bureau therefore proposed model forms for prepaid accounts that disclose both fees for these two authorization methods.

No commenters objected to inclusion of per purchase fees generally in the short form disclosure. An industry trade association, an issuing bank, and a program manager commented on the relevance of requiring the separate disclosure of per purchase fees for PIN and signature. These commenters said that such methods may become obsolete with the evolution of new cardholder verification methods (CVMs) and that many current transactions do not technically require either PIN or signature, such as online purchases. These commenters, plus another industry trade association and the office of a State Attorney General, suggested permitting disclosure of one per purchase fee if the PIN and signature fees are the same. The office of a State Attorney General also urged the Bureau to ban per purchase fees for payroll card accounts.

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(*2*), renumbered as

[388] The Bureau also proposed to require the disclosure of per purchase fees on the top line of the short form. As discussed in greater detail below, the Bureau is finalizing the per purchase fee disclosure mostly as proposed, including locating it in the top line of the short form. See the section-by-section analysis of § 1005.18(b)(2)(ii) below.

[389] These comments are addressed in the section-by-section analysis of § 1005.18(b)(3) below.

§ 1005.18(b)(2)(ii), with certain modifications as described below. Because a per purchase fee could be significant for consumers who make multiple purchases with their prepaid card, the Bureau continues to believe it appropriate for all prepaid accounts to disclose on the short form whether there is a per purchase fee and, if so, the fee for making a purchase. However, the Bureau understands that most prepaid accounts do not charge fees for each purchase transaction and, for those that do, the Bureau believes that distinguishing between PIN and signature when other methods of cardholder verification may now or in the future be available may be confusing to consumers. The Bureau further understands that new cardholder verification methods are rapidly evolving. For these reasons, the Bureau believes disclosure of the breakdown of specific per purchase fees has less consumer benefit than disclosure of one per purchase fee, *i.e.,* the highest fee charged for making a purchase as required pursuant to final § 1005.18(b)(3)(i), which is discussed in detail below. Thus, the Bureau is finalizing this provision as proposed, except it is requiring disclosure of only a single fee for making a purchase using the prepaid account instead of requiring disclosure of two fees (both for when a consumer uses a PIN and when a consumer uses a signature to verify the purchase). The Bureau has also made other technical revisions to this provision for clarity.

With regard to the comment recommending that the Bureau ban per purchase fees for payroll card accounts, such a request is outside the scope of this rulemaking.

18(b)(2)(iii) ATM Withdrawal Fees

The Bureau's Proposal

Proposed § 1005.18(b)(2)(i)(B)(*3*) would have addressed disclosure on the short form of ATM fees for withdrawing cash. Specifically, proposed § 1005.18(b)(2)(i)(B)(*3*) would have required 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. Proposed Model Forms A–10(a) through (d) would have disclosed these ATM withdrawal fees on the top line of the short form.

The Bureau understood that the ATM fees for most prepaid accounts 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. Insofar as accessing ATM networks of which the issuing financial institution is not a member or an affiliate often costs the financial institution more, it typically charges a higher fee to a consumer for using that out-of-network ATM. Given that such potential variances are common, the Bureau believed that disclosure of fees for both in- and out-of-network ATMs withdrawals is important. Although the Bureau noted in the proposal that many participants during its pre-proposal consumer testing were unfamiliar with the difference between ''in-network'' and ''out-of-network'' ATMs, the Bureau believed 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 program.

Proposed comment 18(b)(2)(i)(B)(*3*)–1 would have clarified 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 must 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 proposed incidence-based fee disclosure.

Comments Received

Several industry and consumer group commenters and one office of a State Attorney General commented on the Bureau's proposed ATM withdrawal fee disclosure. In response to the Bureau's question regarding whether additional information is needed on the short form to explain the distinction between in-network versus out-of-network ATMs, a prepaid program manager, an issuing bank, and an industry trade association commented that it was unnecessary to require such an explanation, asserting that consumers generally understand the terminology and if not, consumers could direct their questions to the prepaid issuer or to the Bureau. The program manager also suggested permitting disclosure of a single ATM fee if the fees for both in- and out-of-network withdrawals are the same, as well as disclosing when ATM withdrawals are not available.

The office of a State Attorney General and an industry trade association specifically addressed payroll card accounts. The office of the State Attorney General said that its research revealed that ATMs were the most common way for payroll card accountholders in its State to access their wages and that accountholders regularly incurred fees for ATM transactions. It recommended that all payroll card account programs be required to provide free and unlimited withdrawal of wages via ATMs with no third-party fees. The trade association recommended permitting disclosure in the short form of the number of free ATM withdrawals available to payroll card accountholders.

Two consumer groups and the office of the State Attorney General recommended additional ATM-related disclosures, such as the name of the ATM network and whether the prepaid account is affiliated with the network, the full extent of the network, whether third-party fees apply, whether there are limits on in-network ATM withdrawals, and the cost of international ATM transactions.

No commenters objected to the inclusion of ATM withdrawal fees in the short form, or generally regarding distinguishing between in- and out-of-network ATM withdrawal fees.

The Final Rule

For the reasons set forth herein, the Bureau is adopting § 1005.18(b)(2)(i)(B)(*3*), renumbered as § 1005.18(b)(2)(iii), as proposed with minor technical modifications for clarity. The Bureau continues to believe it is important for consumers to know how much they will be charged to withdraw funds at an ATM and to know the difference, if any, for conducting the withdrawal at an in-network versus out-of-network ATM. The Bureau is also adopting proposed comment 18(b)(2)(i)(B)(*3*)–1, renumbered as comment 18(b)(2)(iii)–1, explaining that a financial institution may not disclose its fee (if any) for using an ATM to initiate a withdrawal of cash in a foreign country in the disclosure required by final § 1005.18(b)(2)(iii), although it may be required to disclose that fee as an additional fee type pursuant to final § 1005.18(b)(2)(ix). In response to comments requesting that additional information be added to the disclosure of ATM withdrawal fees, the Bureau declines to require disclosure of such additional information in final § 1005.18(b)(2)(iii). The Bureau believes the short form disclosure balances the

most important information for consumers with the brevity and clarity necessary for optimal consumer comprehension. Moreover, much of the additional information recommended by commenters, such as third-party fees and the name and extent of the ATM network, must or may be provided in the long form disclosure. *See, e.g.,* final § 1005.18(b)(4)(ii) and Sample Form A–10(f).

To address the comments recommending that the Bureau require more fulsome disclosure of the details regarding ATM fees for payroll card accounts (and similar comments made elsewhere recommending disclosure of other information in addition to ATM fees), the Bureau is finalizing new § 1005.18(b)(2)(xiv)(B), which permits inclusion of a statement in the short form disclosure for payroll card accounts directing consumers to a location outside the short form for information on how to access funds and balance information for free or for a reduced fee. Final § 1005.15(c)(2)(ii) contains a similar provision for government benefit accounts. To address the comment recommending disclosure of a single ATM fee if the fees for both in- and out-of-network withdrawals are the same (and similar comments made elsewhere regarding two-tier fee disclosures), the Bureau is finalizing new § 1005.18(b)(3)(iii), which permits a single disclosure for like fees. Regarding the comment recommending disclosure of when ATM withdrawals are not available, both proposed and final § 1005.18(b)(2) require such disclosure through use of ''N/A'' as discussed above. *See also* final comment 18(b)(2)–1. Regarding the comment requesting that the Bureau ban fees for ATM transactions on payroll card accounts, such request is outside the scope of this rulemaking.

18(b)(2)(iv) Cash Reload Fee

The Bureau's Proposal

Proposed § 1005.18(b)(2)(i)(B)(*4*) would have required 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 believed that the existence of a cash reload service and the fee for using such a service, if any, is important for consumers to know insofar as this is a key feature of many prepaid accounts. Proposed Model Forms A–10(a) through (d) would have disclosed the cash reload fee on the top line of the short form disclosure.

The Bureau also proposed to adopt comment 18(b)(2)(i)(B)(*4*)–1, which would have provided guidance on what would be considered a cash reload fee. Specifically, the proposed comment explained that the cash reload fee, for example, 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. This proposed comment would have also clarified 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 have required that it only disclose the highest fee on the short form. The Bureau noted 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 disclosed on the proposed short form pursuant to proposed comment 18(b)(2)(i)(C)–2. The Bureau noted, 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.

As described in the proposal, 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, however, believed it was 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 its pre-proposal consumer testing, the Bureau found that participants consistently understood a disclosure containing a single cash reload fee, and therefore the Bureau did not believe it was as important to include two fees for this fee type.[390]

Comments Received

One issuing bank and a number of consumer groups expressed concern that failing to reflect third-party fees in connection with the proposed disclosure of the cash reload fee in the short form might create consumer confusion given that it is a standard industry practice for reload network providers or third-party retailers, not the financial institutions that issue prepaid accounts, to provide and charge for the reloading of cash into prepaid accounts. In such circumstances, due to the prohibition on inclusion of third-party fees in the short form pursuant to proposed § 1005.18(b)(2)(i)(C), a financial institution that does not offer proprietary cash reloading capabilities would typically disclose the cash reload fee as ''$0,'' while a financial institution that offers proprietary cash reloading capabilities would have to disclose the cost for the cash reload. In addition to confusing consumers, commenters suggested this outcome would result in a competitive disadvantage for financial institutions that offer proprietary systems, which are usually less expensive than third-party systems, and thereby dissuade financial institutions from offering this service. A trade association recommended eliminating the term ''cash reload'' fee in favor of ''deposit'' fee for consistency and clarity. An issuing bank recommended disclosure of a range of fees for cash reloads and a statement explaining where to find reload locations as well as allowing disclosure of the conditions under which the cash reload fee could be waived instead of the asterisk and linked statement for variable fees pursuant to proposed § 1005.18(b)(2)(C). A program manager commenter recommended permitting disclosure of a disclaimer for third-party charges for cash reloads. An office of a State Attorney General recommended prohibiting cash reload fees, particularly for payroll card accounts, but otherwise supported the disclosure.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(*4*), renumbered as § 1005.18(b)(2)(iv), with certain modifications as described below. As in the proposal, the Bureau is requiring in the final rule disclosure of the cash reload fee in the top line of the short form because it is one of the primary ways consumers fund their prepaid accounts. The Bureau believes the disclosure in the short form of a single cash reload fee balances the most important information for consumers with the brevity and clarity necessary for optimal consumer comprehension and therefore declines to require disclosure of additional content in final § 1005.18(b)(2)(iv) as requested by commenters.

The Bureau is adopting the final rule with a notable change from the proposal. The final rule requires

[390] *See* ICF Report I at 20, 29, and 30.

disclosure of the cash reload fee as the total of all charges from the financial institution and any third parties for a cash reload. *See also* final § 1005.18(b)(3)(iv) and (v). The Bureau had intended the proposed rule to require disclosure of the complete cost of reloading cash. While the Bureau believes that a general prohibition on the disclosure of third-party fees in the short form is appropriate, the Bureau also believes that it is important to reflect the cost of a cash reload via a non-proprietary cash reload network and to avoid disfavoring particular prepaid market participants in connection with reload systems, which is a concern raised by several commenters. By requiring inclusion of the full cost of cash reloads, including third-party fees, consumers will receive full information about the amount of this key fee as well as ensuring standardized disclosure requirements among market participants. Final § 1005.18(b)(2)(iv) also reflects minor technical modifications for clarity.

The Bureau is adopting proposed comment 18(b)(2)(i)(B)(*4*)–1, renumbered as comment 18(b)(2)(iv)–1, with modifications to reflect the above-referenced modification to the regulatory text. The comment provides several examples illustrating how financial institutions must disclose cash reload fees.

The Bureau is persuaded that labeling this fee as ''cash deposits,'' rather than ''cash reloads,'' may be more meaningful to consumers in certain circumstances. Final comment 18(b)(2)(iv)–2 thus allows a financial institution that does not permit cash reloads via a third-party reload network but instead permits cash deposits, for example, in a bank branch, to use the term ''cash deposit'' instead of ''cash reload.'' Regarding the comment requesting that the Bureau ban fees for cash reloads, such request is outside the scope of this rulemaking.

The disclosure and updating of third-party cash reload fees is discussed in further detail in the section-by-section analysis of § 1005.18(b)(3) below.

18(b)(2)(v) ATM Balance Inquiry Fees

The Bureau's Proposal

Directly below the top line in the short form disclosure, the Bureau proposed to include balance inquiry fees charged by a financial institution for inquiring into the prepaid account's balance at an ATM. Specifically, proposed § 1005.18(b)(2)(i)(B)(*5*) would have required 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. Proposed comment 18(b)(2)(i)(B)(*5*)–1 would have clarified 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 as part of the proposed incidence-based fee disclosure pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*).

The Bureau believed that, just as it is important for consumers to know that different fees could be imposed for ATM withdrawals depending on whether the ATM is in-network or out-of-network, it is also 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. However, the Bureau did not propose to include balance inquiry fees in the top line of the short form disclosure, because it believed that it is less common for consumers to initiate ATM balance inquiry transactions compared to withdrawals at ATMs.

Comments Received

The Bureau received comments about the proposed ATM balance inquiry fees disclosure from several industry and consumer group commenters, and an office of a State Attorney General. In response to the Bureau's question regarding placement of ATM balance inquiry fees on the short form disclosure, a program manager stated that placing these fees below the top line of the short form disclosure is sufficient, because consumers are not assessed this fee frequently enough to justify its inclusion in the top line. According to this commenter, as well as a trade association and issuing bank, an ATM is one of the most expensive ways for consumers to check their balance on a prepaid card. The program manager added that consumers generally use free and more convenient methods to obtain balance information such as via interactive voice response, the internet, email, and text message.

A consumer group suggested that the Bureau either eliminate the disclosure to save space or require financial institutions to disclose all methods a consumer may use to check the consumer's prepaid account balance to make consumers aware of free balance inquiry methods. Another consumer group recommended that the Bureau replace the ''or'' in the text of the ATM balance inquiry fee disclosure in the proposed model short form disclosure with a slash (''/'') to distinguish between in- and out-of-network fees. If there are two fees listed, the commenter stated that the use of ''or,'' as opposed to ''/,'' may create uncertainty with respect to which fee is the in-network fee, and which fee is the out-of-network fee.

An office of a State Attorney General supported the Bureau's proposal as an alternative to its primary recommendation that the Bureau ban ATM balance inquiry fees for payroll card accounts. The commenter further suggested that the Bureau require financial institutions to list the in-network and out-of-network ATM balance inquiry fee on separate lines of the short form to enhance consumer comprehension.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(*5*), renumbered as § 1005.18(b)(2)(v), with minor technical modifications for clarity. The Bureau continues to believe consumers should know the different fees they could be charged for in-network versus out-of-network ATM balance inquiries but that these fees are not incurred frequently enough to merit disclosure in the top line of the short form. The Bureau is also adopting proposed comment 18(b)(2)(i)(B)(5)–1, renumbered as comment 18(b)(2)(v)–1, with several revisions. Final comment 18(b)(2)(v)–1 explains that a financial institution may not disclose its fee (if any) for using an ATM to check the balance of the prepaid account in a foreign country in the disclosure required by final § 1005.18(b)(2)(v), although it may be required to disclose that fee as an additional fee type pursuant to final § 1005.18(b)(2)(ix).

The Bureau believes the final rule's ATM balance inquiry fee disclosure requirement balances the most important information for consumers with the brevity and clarity necessary for optimal consumer comprehension and therefore declines to require disclosure of additional content in final § 1005.18(b)(2)(v) as requested by one of the commenters. Regarding the recommendation that the Bureau use a slash (''/'') instead of ''or'' to distinguish between in- and out-of-network fees, the

Bureau notes that in post-proposal consumer testing of prototype short forms nearly all participants were able to correctly identify the ATM balance inquiry fee when using ''or'' and showed no indication of misunderstanding the distinction between in- and out-of-network fees, confirming the Bureau's understanding from pre-proposal testing.[391] Thus, the Bureau declines to make this change. Regarding the request that the Bureau ban fees for balance inquiries for payroll card accounts, such request is outside the scope of this rulemaking.

18(b)(2)(vi) Customer Service Fees

Proposed § 1005.18(b)(2)(i)(B)(*6*) would have required 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 believed that many consumers regularly have issues with their prepaid accounts that require talking to a customer service agent by telephone. The Bureau also believed that some providers impose fees for making such a call. Additionally, several participants in the Bureau's pre-proposal consumer testing reported having incurred such customer service fees. For these reasons, the Bureau believed that the short form disclosure should include this fee, and thus proposed to include it. The Bureau noted that this disclosure would have been required even if the financial institution did not charge such a fee pursuant to proposed comment 18(b)(2)(i)–1.

No commenters opposed inclusion of customer service fees in the short form disclosure. Instead of disclosing the single highest customer service fee, an issuing bank and several consumer groups recommended disclosing either the fee for both live agent and interactive voice response (IVR) customer service or just the IVR fee. They said otherwise customers may be misled into thinking the disclosed fee includes the cost of a call to an IVR customer service, which generally is free. An office of a State Attorney General recommended that the Bureau ban customer service fees for payroll card accounts because such fees chill inquiry into fraudulent or erroneous charges, but it otherwise supported the disclosure.

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(*6*), renumbered as § 1005.18(b)(2)(vi), with certain modifications as described below. The Bureau continues to believe that it is important to require disclosure of this fee because consumers regularly have issues or questions that require contact with the financial institution's customer service department, but the fee is not so common as to merit disclosure in the top line of the short form.

The Bureau is adopting the final rule with a notable change from the proposal. The Bureau agrees with commenters that it is beneficial for consumers to specifically be alerted to the generally free or less expensive IVR method of customer service, and thus is finalizing § 1005.18(b)(2)(vi) requiring disclosure in the short form of fees for both automated and live agent customer service. The Bureau's post-proposal consumer testing revealed that, consistent with several commenters' observations, disclosure of a general customer service fee resulted in many participants incorrectly assuming the fee would remain the same whether the service was live or automated, while all participants understood the distinction when both automated and live agent customer service fees were disclosed.[392] Similarly, when a short form disclosed a fee for ''live customer service,'' all participants understood that the fee would apply if they spoke to a live customer service agent and that the fee would not be charged if they used the automated customer service system to get information about their accounts.[393] However, because the structure of the multiple service plan short form permitted pursuant to final § 1005.18(b)(6)(iii)(B)(*2*) does not have sufficient room to disclose both automated and live customer service fees on separate lines, final § 1005.18(b)(2)(vi) states that a financial institution using the multiple service plan short form pursuant to final § 1005.18(b)(6)(iii)(B)(*2*) must disclose only the fee for live customer service. The Bureau believes that disclosing the live customer service fee is preferable to disclosing the automated fee because of the potential cost to the consumer, as the Bureau understands that automated customer service is typically provided at no cost to the consumer. Finally, the Bureau has made other technical modifications to this provision for clarity. Regarding the request that the Bureau ban customer service fees for payroll card accounts, such a request is outside the scope of this rulemaking.

18(b)(2)(vii) Inactivity Fee

The Bureau's Proposal

Proposed § 1005.18(b)(2)(i)(B)(*7*) would have required 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. The Bureau believed that many financial institutions charge consumers fees when they do not use their prepaid accounts for a specified period of time. The Bureau believed 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 program charges fees for inactivity.[394] Thus, the Bureau proposed that financial institutions disclose the existence, duration, and amount of inactivity fees, or that no such fee will be charged, as part the short form disclosure. The Bureau also noted in the proposal, however, that, as with all the disclosures in the short form, the requirement to disclose a particular fee type was not an endorsement of such a fee.[395]

Proposed comment 18(b)(2)(i)(B)(*7*)–1 would have clarified that when disclosing the inactivity fee pursuant to proposed § 1005.18(b)(2)(ii)(A) as part of the long form disclosure, a financial institution should specify whether this inactivity fee was imposed in lieu of or in addition to the periodic fee disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*). The Bureau believed that a lower inactivity fee may correlate with a prepaid account product imposing a higher monthly periodic fee on a consumer. Thus, consumers using 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. In preparing the proposal, the Bureau considered whether the risk of potential confusion to a consumer outweighed the benefit of including the inactivity fee on the short form disclosure, but believed that providing consumers with the inactivity fee amount and the relevant duration of dormancy would allow consumers to make an informed choice about which

[391] *See* ICF Report II at 10 and 21.

[392] *See* ICF Report II at 12–13.

[393] *Id.* at 23.

[394] In the Bureau's pre-proposal consumer testing, several participants mentioned only using their prepaid cards occasionally.

[395] The Bureau understands that some States bar or limit inactivity fees, and nothing in this final rule is meant to preempt any such State laws.

prepaid account product is best for their usage patterns.

Comments Received

The Bureau received comments from a program manager, an issuing bank, an industry trade association, a consumer group, and an office of a State Attorney General about the proposed inactivity fee disclosure. In response to the Bureau's solicitation of comments as to whether inactivity fees should be included in the short form disclosure, the program manager responded that disclosure of both the monthly fee and the inactivity fee would not confuse consumers, as most prepaid products either charge a monthly fee or an inactivity fee, but not both. Even if both fees are charged, it said, consumers can get more information about the fees from the long form disclosure or on the Web site associated with the prepaid program disclosed on the short form. In contrast, the trade association and the issuing bank urged the Bureau not to require disclosure of inactivity fees because, they said, both studies of prepaid cards that they reviewed and information provided to the trade association by its members indicate that inactivity fees are not commonly charged. Additionally, the commenters said there are better means than the short form through which consumers can learn about inactivity fees, such as the Bureau's Web site, the prepaid issuer's Web site or its customer service, and that contact information for those sources is included in the short form disclosure. The consumer group and the office of a State Attorney General recommended primarily that the Bureau ban inactivity fees, but otherwise generally supported the disclosure.

The consumer group also asserted that the portion of proposed comment 18(b)(2)(i)(B)(*7*)–1 directing financial institutions to include in the long form disclosure whether an inactivity fee is charged in lieu of or in addition to the periodic fee disclosure implied the Bureau's implicit endorsement of charging of both a periodic fee and an inactivity fee—a practice the consumer group opposed. The consumer group also stated that the inactivity fee can be known as ''dormancy'' or ''maintenance'' fees, and that the Bureau should require standardized terminology to avoid confusion.

The office of the State Attorney General also recommended that the Bureau require a minimum 10-day notice prior to imposition of an inactivity fee on a payroll card account. The commenter stated that the notice should include the amount of the inactivity fee, the date the fee will be assessed, and a description of how to avoid the fee. The commenter asserted that the notice should be provided through the employee's preferred method of receiving communications from the payroll card account vendor.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(*7*) and comment 18(b)(2)(i)(B)(*7*)–1, renumbered as § 1005.18(b)(2)(vii) and comment 18(b)(2)(vii)–1, with certain modifications as described below. Because some consumers use prepaid cards on an infrequent or occasional basis, the Bureau continues to believe that disclosure of the inactivity fee is important to provide specific information to consumers regarding the consequences of their prepaid account use patterns, even though not all financial institutions may charge this fee. The Bureau understands the concerns of those commenters seeking to have the fee removed from the short form, but believes that other means of communicating this potentially significant fee are insufficient.

In the final rule, in place of the proposed disclosure of the ''duration of inactivity,'' the Bureau is requiring the broader disclosure of the ''conditions'' that trigger the financial institution to impose the inactivity fee.[396] This change is intended to ensure that more relevant information is disclosed, including what the consumer must do to avoid imposition of the inactivity fee (such as engaging in at least one transaction during a specified time period), the time period after which the fee is imposed, and how often the fee is assessed. The Bureau has made corresponding changes to comment 18(b)(2)(vii)–1, and also removed the direction to financial institutions to specify in the long form whether the inactivity fee is imposed in lieu of or in addition to the periodic fee, having relocated this portion of the comment to final comment 18(b)(4)(ii)–2, which addresses disclosure in the long form of any conditions under which a fee may be imposed, waived, or reduced. Final comment 18(b)(2)(vii)–1 also contains an illustrative example of an inactivity fee disclosure. Finally, the Bureau made other technical modifications to final § 1005.18(b)(2)(vii) and comment 18(b)(2)(vii)–1 for conformity and clarity.

In response to the comment from a consumer group that proposed comment 18(b)(2)(i)(B)(*7*)–1 implicitly endorses the simultaneous charge of both a periodic fee and an inactivity fee, the Bureau reiterates that it does not endorse such a practice nor is it aware of any financial institution that imposes both fees at the same time. However, the Bureau believes it is important that consumers be clearly apprised if their prepaid account charges a periodic fee and an inactivity fee in tandem and for this reason it is included in the commentary for the final rule's long form disclosure requirements. In response to the consumer group recommending that the Bureau require standardized terminology for the inactivity fee disclosure to avoid consumer confusion, because the final rule requires financial institutions to make this disclosure using the term ''inactivity fee'' or a substantially similar term, the Bureau expects that financial institutions will not use substantially different terminology that would confuse consumers. The Bureau also notes that final § 1005.18(b)(8), discussed below, requires financial institutions to use fee names and other terms consistently within and across the short form and long form disclosures.

Regarding the comment requesting that the Bureau ban inactivity fees either generally or for payroll card accounts, such a request is outside the scope of this rulemaking.

18(b)(2)(viii) Statements Regarding Additional Fee Types

The proposal would have required two distinct disclosures in the short form designed to alert consumers to other fees financial institutions may charge in addition to the standardized static fees disclosed at the top of the short form. First, following the static fee disclosures, pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*), the proposed short form would have disclosed up to three fees incurred most frequently by consumers of that particular prepaid card program that were not otherwise disclosed on the short form (referred to as incidence-based fees). Second, pursuant to proposed § 1005.18(b)(2)(i)(B)(*10*), the short form would have included a statement in bold-faced type near the bottom of the disclosure stating: ''We charge [X] other fees not listed here.'' As described further below, the Bureau believed that these two elements would help emphasize to consumers that the short form disclosure was not a comprehensive list of all fees, provide consumers with specific information about the additional fees that they were most likely to encounter, and encourage consumers to review the long form disclosure or otherwise seek additional

[396] Of course, if there is no inactivity fee, no disclosure of conditions is required.

information about the prepaid account's features and costs.

As discussed further below in connection with both final § 1005.18(b)(2)(viii) and (ix), the Bureau is adopting both proposed disclosures with substantial revisions and is placing them together on the short form to provide greater clarity to consumers and enhance the impact of each disclosure relative to the proposed version. Other adjustments to the final rule to improve consumer comprehension and reduce implementation burdens for financial institutions include, for example, requiring disclosure of the number of additional types of fees charged in connection with the prepaid account program, rather than counting each variation in fees toward the total as proposed, and requiring disclosure of specific fee types on the short form based on revenue, rather than frequency, and only if in excess of a de minimis threshold. The Bureau believes that these and other changes will make the disclosures easier for financial institutions to prepare and more meaningful for consumers.

The Bureau's Proposal

In proposed § 1005.18(b)(2)(i)(B)(*10*), the Bureau proposed to require financial institutions to disclose on the short form a statement regarding the number of fees that could be imposed upon a consumer, in a form substantially similar to the clause set forth in proposed Model Forms A–10(a) through (d). The number of fees would have been derived from those listed on the comprehensive long form disclosure pursuant to proposed § 1005.18(b)(2)(ii)(A), other than those listed in the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*8*).

The Bureau sought comment on whether the proposed disclosure would be useful to consumers or whether listing the total number of additional fees without any other information would actually interfere with consumers' ability to make an informed choice between prepaid account programs. The Bureau acknowledged that there was some risk that consumers might assume that the additional fees were punitive, rather than covering the cost of optional services or product features that the consumer might find advantageous. However, the Bureau also noted that some participants in the Bureau's pre-proposal consumer testing reported finding out about fees only after purchasing their card, and sometimes only after incurring them.[397] On balance, the Bureau believed that disclosing in the short form a statement indicating exactly how many additional fees could apply would encourage consumers to seek out more information about a prepaid account before acquisition.

Unlike the proposed incidence-based fees, the Bureau did not believe it was necessary to propose provisions about updating this statement regarding other fees. Pursuant to proposed § 1005.18(f), a financial institution would have been required to include the long form disclosure in a prepaid account's § 1005.7(b)(5) initial disclosures. Any updates made to the fees disclosed in the long form would have required an overhaul of all of the disclosures for a given prepaid account product, which the Bureau believed was unlikely to occur. Proposed comment 18(b)(2)(i)(B)(*10*)–1 would have provided examples of how to comply with proposed § 1005.18(b)(2)(i)(B)(*10*). Proposed comment 18(b)(2)(i)(B)(*10*)–2 would have provided 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 have clarified 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 also would have provided an example illustrating this concept. Finally, the proposed comment would have explained that, even if a fee could be waived under certain conditions, it would still be counted in order to comply with proposed § 1005.18(b)(2)(i)(B)(*10*).

Comments Received

Several consumer groups generally supported this portion of the proposed short form disclosure as beneficial to alert consumers to fees not disclosed in the short form and to encourage financial institutions to simplify their fee schedules, although some groups also advocated providing a paper long-form disclosure in all settings to ensure that consumers could immediately review more detailed information about any additional fees.[398]

A number of industry commenters, including trade associations, issuing banks, and program managers, recommended eliminating the proposed disclosure of the number of additional fees charged. In its place, many of these commenters favored a general statement that other fees are charged, generally with reference to the cardholder agreement for more information about these other fees. One trade association and an issuing bank stated that they found the proposed disclosure rational and reasonable, as it provided useful data to consumers without overwhelming them with information and without overcrowding the short form disclosure, though they also preferred a requirement simply to state that additional fees could apply.

Many of these industry commenters expressed concern that presenting the number of fees would tend to mislead and confuse consumers and thus interfere with consumers' ability to make an informed choice among prepaid account programs. Several industry commenters said that the statement would mislead consumers into believing that these other fees are common fees they are likely to incur when in fact the commenters asserted that the fees may only be charged in connection with optional specialized services. Other industry commenters said that the number of other fees could mislead and confuse consumers into thinking that a product with a higher number of available functions—and fees for those functions—is more expensive or otherwise inferior to a product with fewer other fees, when in fact the opposite may be true. Some industry commenters warned that this stigmatized perception of a higher number of other fees and commensurate costs to update the disclosures may undermine innovation and flexibility, as financial institutions may either discontinue or cease developing new and flexible services that may be advantageous to consumers.

Similarly, one of the consumer groups that recommended disclosure of all fees in all acquisition settings noted that an account that has many more other fees may actually charge fewer fees for the services it has in common with another account, but the proposed short form would make it seem as though it was potentially a more costly product. The consumer group recommended that the Bureau monitor the effect of requiring only the listing of the number of ''other'' fees on market innovation and the cost and types of fees that are charged.

An issuing bank agreed that the disclosure of the number of additional fees charged can be a factor for consumers in comparing prepaid account terms, but also challenged the methodology of counting each fee

[397] *See* ICF Report I at 7.

[398] For a discussion of the reasons the Bureau is requiring both a short form and a long form disclosure but is not requiring a written disclosure of all fees in all acquisition settings, see the section-by-section analyses of § 1005.18(b) and (b)(1)(ii) and (iii) respectively.

variation as a separate fee. It said this methodology could be misleading to consumers as it will lead to an artificial overstatement of the total number of fees. It said that services like bill payment, which may have standard and expedited delivery and are designed to be flexible and offer the most choice and control to consumers, will make the product appear undesirable, as the number of additional fees will be inflated. Instead, it recommended counting fee types rather than individual fee variations within fee types. Two trade associations and two other issuing banks also recommended against counting each fee variation as a separate fee, agreeing that it might unnecessarily increase the number of other fees without commensurate benefit for consumers.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(*10*), renumbered as § 1005.18(b)(2)(viii), with substantial modifications, largely in response to comments received. First, the Bureau is locating together both disclosures dealing with fees not otherwise disclosed in the short form: The number of such fees required pursuant to final § 1005.18(b)(2)(viii) and the disclosure of certain such fees (referred to in the proposal as incidence-based fees) pursuant to final § 1005.18(b)(2)(ix). Second, instead of requiring disclosure of the number of additional *fees,* including all fee variations, the Bureau is requiring disclosure of the number of additional *fee types.*[399] Third, instead of requiring the number of additional fees that could be imposed on a consumer in general, the Bureau is limiting this disclosure to the number of additional fee types that the financial institution may charge consumers with respect to the prepaid account. Fourth, the Bureau is requiring disclosure of an additional statement if a financial institution discloses additional fee types pursuant to final § 1005.18(b)(2)(ix) that directs consumers to the disclosure of those additional fee types that follows. Fifth, the Bureau has relocated the statement regarding the number of additional fee types from the bottom portion of the proposed short form disclosure to a more clearly delineated ''additional fee types'' portion that follows the static fees.

Finally, the Bureau is not adopting any of the proposed commentary, but rather is adopting new comments 18(b)(2)(viii)(A)–1 through –4 and 18(b)(2)(viii)(B)–1 to clarify various issues regarding application of the final rule.

Statement Regarding the Number of Additional Fee Types Charged Required by § 1005.18(b)(2)(viii)(A)

Final § 1005.18(b)(2)(viii)(A) requires a statement disclosing the number of additional fee types the financial institution may charge consumers with respect to the prepaid account, using the following clause or a substantially similar clause: ''We charge [x] other types of fees.'' The number of additional fee types disclosed must reflect the total number of fee types under which the financial institution may charge fees, excluding fees required to be disclosed pursuant to final § 1005.18(b)(2)(i) through (vii) and (5) and any finance charges as described in final Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61.

The Bureau is finalizing § 1005.18(b)(2)(viii) because it continues to believe, as explained in the proposal, that it is crucial to inform consumers that there may be a cost for features not otherwise captured in the short form disclosure. Disclosure of this information will help both alert consumers that the short form is not a comprehensive fee disclosure and encourage consumers to seek out more information about the prepaid account from the long form disclosure and other sources. As noted in the proposal, the Bureau's pre-proposal consumer testing revealed that participants often did not know all the fees that might be assessed prior to their purchase of a prepaid account. In addition, the Bureau's post-proposal consumer testing revealed that, while not all participants understood the significance of the disclosure of the number of additional fee types, participants were keenly interested in this disclosure, which the Bureau believes will motivate consumers to seek more information about these additional fee types.[400]

The Bureau declines to use a more general statement to alert consumers that there may be additional fees, as requested by some industry commenters. The Bureau believes that disclosure of the specific number of additional fee types, as opposed to a general statement regarding other fees charged, provides consumers with concrete information and stronger motivation to both better inform themselves and to direct their searches for additional information. Moreover, as discussed below, the Bureau believes that focusing the disclosure on tallying the *types* of fees rather than counting each variation in fees toward the total directly addresses industry's concerns that disclosing a specific number of other fees would prompt consumers to assign undue negative weight to the fact that a product may have many fee variations. The change to fee types also helps reduce compliance burden across the two related disclosures of the number of additional fee types required by this provision and the disclosure of additional fee types required by final § 1005.18(b)(2)(ix).

The Bureau disagrees with commenters that the comprehensive disclosure of all fees in another disclosure, such as the long form or the cardholder agreement, negates the rationale for disclosing the number of additional fee types in the short form. The Bureau believes that consumers generally would rely solely on the short form disclosure in making their acquisition decisions if they do not see language that specifically emphasizes the value of consulting the long form. The Bureau thus believes that listing the total number of fee types that are not otherwise listed on the short form will complement and enhance the statement in final § 1005.18(b)(2)(xiii) directing consumers to the long form, providing a concrete incentive to consult the longer disclosure for products that are more complex.[401] Specifically, the Bureau's post-proposal consumer testing revealed that, when asked how they could learn more about ''other fees'' not shown on the short form, practically all participants referred to the financial institution's telephone number and Web site disclosed on the prototype short form disclosure (*i.e.,* the information sources required by final § 1005.18(b)(2)(xiii)).[402] In sum, the Bureau believes that the disclosure of the number of additional fee types in the short form pursuant to § 1005.18(b)(2)(viii) will directly inform consumers of important information and serve to spur them to further inquiry in other more detailed disclosures.

The Bureau acknowledges commenters' concerns that some consumers may tend to assume that a prepaid account with a relatively high number of additional fees is more expensive or less desirable than other accounts, even when the opposite may be true. In part to address this concern, the Bureau is finalizing the rule

[399] See final comment 18(b)(2)(viii)(A)–2 for an explanation of the term ''fee type'' and a list of examples of fee types and fee variations within those fee types.

[400] ICF Report II at 11–12 and 22.

[401] *See* ICF Report II at 12 and 22.

[402] *Id.*

requiring financial institutions to disclose the total number of *fee types,* rather than the total number of all *fees* (including all fee variations within a fee type) that would have been required under the proposal. Requiring disclosure of the number of fee types instead of the number of discrete fees likely will reduce the number required to be disclosed for a typical prepaid account program. The Bureau believes that this modification for the final rule should help ameliorate the risk raised by some commenters that consumers will reject prepaid accounts with a high number of additional fees out of hand without seeking more detailed fee information to determine whether the products meet their needs. Moreover, the requirements for both final § 1005.18(b)(2)(viii) and (ix) are based on fee types (as opposed to one being based on discrete fees and the other on fee types), thereby reducing the burden of developing and maintaining two separate counts to determine and disclose the elements under their respective rules. The Bureau is also providing a list of fee types and fee variations in final comment 18(b)(2)(viii)(A)–2, discussed below—which are based on fees that the Bureau is aware exist in the current prepaid marketplace—that a financial institution may use when determining both the number of additional fee types charged pursuant to final § 1005.18(b)(2)(viii)(A) and any additional fee types to disclose pursuant to final § 1005.18(b)(2)(ix). The Bureau believes that these provisions will reduce the risks and burdens raised by commenters concerning the proposed disclosure of the total number of fees not otherwise listed, while still providing the consumer with an important signal and incentive to investigate prepaid accounts that have more complex pricing structures.

In addition, the Bureau believes that this modification addresses commenters' concerns, at least in part, regarding a potential chill to innovation of new features because such fee variations within a fee type will not be required to be separately counted for purposes of this disclosure. The Bureau intends to monitor compliance with this rule, including financial institutions' disclosures of the number of additional fee types charged, as well as market innovations in the prepaid industry more generally, and will consider additional action in future rulemakings if necessary.

Modifying the final rule to require disclosure of the number of fee types also addresses concerns raised by some commenters that the proposed disclosure would have included many fees that are not commonly incurred by consumers—including fees for discretionary features that require specific consumer action before they are incurred. For example, under the final rule, a financial institution would count bill payment as an additional fee type if it offered this feature, but, unlike the rule as proposed, would not count each of the discrete fee variations within bill payment such as ACH bill payment, paper check bill payment, check cancellation, and regular or expedited delivery of a paper check. Thus, in addition to a reduction in the overall number of additional fees required to be disclosed under the final rule, a financial institution would similarly not be required to disclose many of the less common fees and fees triggered by affirmative consumer action. While some of the additional fee types required to be disclosed in the final rule may still be less common or triggered only when a consumer elects to use an optional service, the Bureau reiterates that the primary objective of this provision is to alert consumers to fee information absent from the short form and to spur consumers to take action to gain a more fulsome understanding of the terms of a prospective prepaid account; this disclosure fulfils this objective.

As discussed in the section-by-section analysis of § 1005.18(b)(2)(ix) below, the Bureau is adopting a de minimis threshold with respect to the disclosure of specific additional fee types. The Bureau does not believe a de minimis threshold would be appropriate for the disclosure required by § 1005.18(b)(2)(viii)(A) regarding the total number of additional fee types. The Bureau notes, however, that with the de minimis threshold in § 1005.18(b)(2)(ix), disclosure of such fee types under final § 1005.18(b)(2)(ix) would not be required, although such fee types would be counted in the total number of additional fee types disclosed pursuant to final § 1005.18(b)(2)(viii).

Finally, the Bureau continues to believe it is not necessary to include in the final rule specific requirements for updating the statement regarding the number of additional fee types charged required by final § 1005.18(b)(2)(viii)(A). As discussed in the section-by-section analysis of § 1005.18(b) above, the Bureau does not believe that financial institutions change the fee schedules for prepaid accounts often, particularly those sold at retail. If a financial institution is making available a new optional service for all prepaid accounts in a particular prepaid account program, Regulation E provides a means for financial institutions to notify consumers of terms associated with a new EFT service that is added to a consumer's account, in § 1005.7(c). A financial institution may provide new consumer disclosures in accordance with § 1005.7(c) post-acquisition, without needing to pull and replace card packaging that does not reflect that new optional feature in the disclosure of the number of additional fee types pursuant to § 1005.18(b)(2)(viii)(A). The Bureau does expect, however, that financial institutions will keep their other disclosures up to date (including those provided electronically and orally, as well as disclosures provided in writing that are not a part of pre-printed packaging materials, such as those printed by a financial institution upon a consumer's request). The Bureau intends to monitor financial institutions' practices in this area, however, and may consider additional requirements in a future rulemaking if necessary.

Final comment 18(b)(2)(viii)(A)–1 clarifies what fee types to count in the total number of additional fee types, specifically excluding fees otherwise required to be disclosed in and outside the short form pursuant to final § 1005.18(b)(2)(i) through (vii) and (5) and any finance charges as described in final Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in final § 1026.61. Excluding the static fees and fees required to be disclosed outside the short form avoids the duplicative counting of fees already disclosed to the consumer. As discussed in more detail below, the Bureau has made a strategic decision to focus the bulk of the short form disclosure on usage of the prepaid account itself rather than any charges related to overdraft credit features. The possibility that consumers may be offered an overdraft credit feature for use in connection with the prepaid account is addressed in the short form pursuant to § 1005.18(b)(2)(x), which requires the following statement if such a feature may be offered: ''You may be offered overdraft/credit after [x] days. Fees would apply.'' Consistent with this overall decision, the Bureau believes that it is appropriate to exclude any finance charges related to an overdraft credit feature that may be offered at a later date to some prepaid consumers from the disclosures regarding additional fees under both final § 1005.18(b)(2)(viii) and (ix). If consumers are interested in such a feature, they can look to the Regulation Z disclosures in the long form pursuant

to final § 1005.18(b)(4)(vii), discussed below, for more details.

Final comment 18(b)(2)(viii)(A)–1.i explains that the number of additional fee types includes only fee types under which the financial institution may charge fees; accordingly, third-party fees are not included unless they are imposed for services performed on behalf of the financial institution. The comment additionally clarifies that the number of additional fee types includes only fee types the financial institution may charge consumers with respect to the prepaid account; accordingly, additional fee types does not include other revenue sources such as interchange fees or fees paid by employers for payroll card programs, government agencies for government benefit programs, or other entities sponsoring prepaid account programs for financial disbursements.

Final comment 18(b)(2)(viii)(A)–1.ii explains that fee types that bear a relationship to, but are separate from, the static fees disclosed in the short form must be counted as additional fee types for purposes of final § 1005.18(b)(2)(viii). The comment also provides a detailed explanation regarding the treatment of international ATM fees and fees for reloading funds into a prepaid account in a form other than cash (such as electronic reload and check reload). In addition, the comment explains that additional fee types disclosed in the short form pursuant to final § 1005.18(b)(2)(ix) must be counted in the total number of additional fee types. This is because the exclusions in final § 1005.18(b)(2)(ix)(A)(*1*) and (*2*) are only for fees required to be disclosed pursuant to final § 1005.18(b)(2)(i) through (vii) and (5) and any finance charges imposed on the prepaid account as described in Regulation Z § 1026.4(b)(11)(ii) in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z § 1026.61. Further, the statement required by final § 1005.18(b)(2)(viii)(B) explains that the additional fee types disclosed are some of the total number of additional fee types.

The Bureau is adopting new comment 18(b)(2)(viii)(A)–2 to provide guidance regarding the calculation of the number of additional fee types pursuant to final § 1005.18(b)(2)(viii) as well as to address concerns raised by an industry commenter regarding how to categorize fees in determining the additional fee types to disclose under final § 1005.18(b)(2)(ix). The comment explains that the term fee type, as used in final § 1005.18(b)(2)(viii) and (ix), is a general category under which a financial institution charges fees to consumers. A financial institution may charge only one fee within a particular fee type, or may charge two or more variations of fees within the same fee type. (The Bureau notes that an additional fee type for which a financial institution does not charge any fee to the consumer, including for any variations of the additional fee type, is not counted in the total number of additional fee types under final § 1005.18(b)(2)(viii) nor required to be disclosed on the short form under final § 1005.18(b)(2)(ix).) The comment goes on to provide a list of examples of fee types a financial institution may use when determining both the number of additional fee types charged pursuant to final § 1005.18(b)(2)(viii)(A) and any additional fee types to disclose pursuant to final § 1005.18(b)(2)(ix). The comment also explains that a financial institution may create an appropriate name for other additional fee types.

The Bureau compiled the list of examples of fee types in new comment 18(b)(2)(viii)(A)–2 to provide guidance to financial institutions and to help facilitate their categorization of additional fee types for satisfying the requirements in final § 1005.18(b)(2)(viii)(A) and (ix). The list also may encourage standardization of this portion of the short form in that, although additional fee types disclosed will vary across short forms for different prepaid account programs, the Bureau believes financial institutions will generally use consistent nomenclature for additional fee types identified on the list. The Bureau compiled this list of examples of fee types based on particular fee types referenced in comments received on the proposal and by reviewing the packaging of and disclosures for scores of prepaid account programs.[403] The Bureau balanced multiple considerations in compiling the list in final comment 18(b)(2)(viii)(A)–2 for purposes of both final § 1005.18(b)(2)(viii) and (ix), including existing industry practices with regard to fee types, the accounting burdens associated with relatively narrower or broader definitions of fee types, and the potential benefits to both industry and consumers in using narrower definitions of fee types to communicate information about specific account features and fees. The Bureau believes the resulting list strikes an appropriate balance by capturing categories and terms employed by the prepaid industry itself that will be useful to financial institutions and consumers in determining and understanding additional fee types. The Bureau is providing flexibility to financial institutions to fashion appropriate names for other fee types, including fee types for services that do not yet exist in the prepaid marketplace.

Final comment 18(b)(2)(viii)(A)–3 clarifies that, pursuant to final § 1005.18(b)(2)(vi), a financial institution using the multiple service plan short form disclosure pursuant to final § 1005.18(b)(6)(iii)(B)(*2*) must disclose only the fee for calling customer service via a live agent. Thus, pursuant to final § 1005.18(b)(2)(viii), any charge for calling customer service via an interactive voice response system must be counted in the total number of additional fee types.

Final comment 18(b)(2)(viii)(A)–4 clarifies that a financial institution must use the same categorization of fee types in the number of additional fee types disclosed pursuant to final § 1005.18(b)(2)(viii) and in its determination of which additional fee types to disclose pursuant to final § 1005.18(b)(2)(ix). The Bureau is including this comment on consistency to make clear that a financial institution is not permitted to, for example, shorten its list of fee types into a few broad categories (in order to minimize the number of additional fee types required to be disclosed pursuant to final § 1005.18(b)(2)(viii)) but use a more detailed list of fee types broken out into a greater number of categories when assessing its obligations under final § 1005.18(b)(2)(ix) (in order to maximize the number of fee types that may fall below the de minimis threshold pursuant to final § 1005.18(b)(2)(ix)(A)(*2*)).

Statement Directing Consumers To Disclosure of Additional Fee Types Required by § 1005.18(b)(2)(viii)(B)

Final § 1005.18(b)(2)(viii)(B) requires that, if a financial institution makes a disclosure of specific additional fee types pursuant to final § 1005.18(b)(2)(ix), the financial institution must include a statement directing consumers to that disclosure, located after but on the same line of text as the statement regarding the number of additional fee types required by final § 1005.18(b)(2)(viii)(A), using the following clause or a substantially similar clause: ''Here are some of them:''.

The disclosure required by final § 1005.18(b)(2)(viii)(A) indicating the number of additional fee types will

[403] As part of the Bureau's Study of Prepaid Account Agreements, Bureau staff found fee tables or other explanations of at least some of the fees charged for 278 of the 325 agreements reviewed. *See* Study of Prepaid Account Agreements at 29 and note 49.

generally be followed by the specific disclosure of two additional fee types pursuant to final § 1005.18(b)(2)(ix). The Bureau believes that a brief transition statement linking these two disclosures will enhance consumer understanding of both disclosures and dispel potential consumer misunderstanding that features are not offered if they are not disclosed on the short form.[404] Thus, the line in the short form disclosure following the static fees would disclose the following or substantially similar clauses: ''We charge X other types of fees. Here are some of them:''.

As discussed in the section-by-section analysis of § 1005.18(b)(2)(ix) below, the Bureau believes that the brevity and clarity of the short form disclosure necessary for optimal consumer comprehension and engagement cannot support a detailed explanation of what additional fee types are or the criteria the financial institution used in determining which additional fee types to disclose. The Bureau's pre-proposal consumer testing of such explanations support this conclusion.[405] Pre-proposal testing of a statement intended to inform consumers that the fees listed were those that generated significant revenue for the financial institution resulted in minimal participant comprehension or notice.[406] Post-proposal testing of a similar disclosure that, in addition to including an explanation of the criteria for disclosing such fees (*i.e.,* that the two fees listed were the most commonly charged), also directed consumers where to find detail about all fees, similarly did not increase participant comprehension.[407]

Thus, to make the connection for consumers that the additional fee types disclosed pursuant to final § 1005.18(b)(2)(ix) are a subset of the number of additional fee types disclosed pursuant to final § 1005.18(b)(2)(viii)(A), and that absence of any feature on the short form does not necessarily mean the prepaid account program does not offer that feature, the Bureau is including in the final rule the transition statement set forth above.

Final comment 18(b)(2)(viii)(B)–1 provides guidance regarding the statement required by final § 1005.18(b)(2)(viii)(B) directing consumers to the disclosure of additional fee types pursuant final § 1005.18(b)(2)(ix). The comment explains that a financial institution that makes no disclosure pursuant to final § 1005.18(b)(2)(ix) may not include a disclosure pursuant to final § 1005.18(b)(2)(viii)(B). The comment also provides examples regarding substantially similar clauses a financial institution may use in certain circumstances to make its disclosures under final § 1005.18(b)(2)(viii)(A) and (B), such as when a financial institution has several additional fee types but is only required to disclose one of them pursuant to final § 1005.18(b)(2)(ix).

18(b)(2)(ix) Disclosure of Additional Fee Types

As explained at the beginning of the section-by-section analysis of § 1005.18(b)(2)(viii) above, the proposal would have required two distinct disclosures in the short form designed to alert consumers to other fees financial institutions may charge in addition to the standardized static fees disclosed at the top of the short form. First, following the static fee disclosures, pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*), the proposed short form would have disclosed up to three fees incurred most frequently by consumers of that particular prepaid card program that were not otherwise disclosed on the short form (referred to as incidence-based fees). Second, pursuant to proposed § 1005.18(b)(2)(i)(B)(*10*), the short form would have disclosed a statement in bold-faced type near the bottom of the disclosure stating: ''We charge [X] other fees not listed here.'' As described herein, the Bureau believed that these two elements would help emphasize to consumers that the short form disclosure was not a comprehensive list of all fees, provide consumers with specific information about the additional fees that they were most likely to encounter, and encourage consumers to review the long form or otherwise seek additional information about the prepaid account's features and costs.

As discussed in connection with both final § 1005.18(b)(2)(viii) and (ix), the Bureau is adopting both proposed disclosures with substantial revisions and is placing them together on the short form to provide greater clarity to consumers and enhance the impact of each disclosure relative to the proposed version. Other adjustments made to the final rule to improve consumer comprehension and reduce implementation burdens for financial institutions include, for example, requiring disclosure of the number of additional types of fees charged in connection with the prepaid account program, rather than counting each variation in fees toward the total as proposed and requiring disclosure of specific fee types on the short form based on revenue, rather than frequency, and only if in excess of a de minimis threshold. The Bureau believes that these and other changes will make the disclosures easier for financial institutions to prepare and more meaningful for consumers.

The Bureau's Proposal

In addition to the fees that all financial institutions would have had to disclose in the static portion of the short form disclosure pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*), the Bureau also proposed that financial institutions 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 offered several prepaid account products, the incidence-based fees analysis would have had to be conducted separately for each product, based on usage patterns in the prior 12-month period, and updated annually. Thus, the incidence-based fees that would have been disclosed to a consumer on the short form could have varied from one product to the next depending on which fees consumers incurred most frequently for each product.

The Bureau proposed this disclosure because it was concerned that, while the fee disclosures in the static portion of the short form under the proposed rule would have included 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 also had concerns that, absent this incidence-based disclosure, there was a risk of evasion whereby a financial institution trying to gain an advantage relative to its competitors could restructure its fee schedule to make the fees disclosed in the static portion of the short form lower, while structuring its pricing to make up or even increase overall revenue by imposing fees that would not otherwise be disclosed on the short form. The Bureau believed that requiring financial institutions to disclose other fees that are frequently

[404] See the section-by-section analysis of § 1005.18(b)(2)(ix) below discussing industry commenters' concern that disclosure of the proposed incidence-based fees would mislead consumers into thinking that features are not offered if they are not disclosed as incidence-based fees.

[405] *See* ICF Report I at 35 and ICF Report II at 22–23.

[406] *See* ICF Report I at 35. (Certain prototype short form disclosures tested included the statement: ''The fees below generate significant revenue for this company.'')

[407] *See* ICF Report II at 22–23. (Certain prototype short form disclosures tested included the statement: ''We charge [x] additional fees. Details on fees inside the package, at 800–234–5678 or at *bit.ly/XYZprepaids.* These are our most common:''.)

paid by consumers would limit the ability of financial institutions to avoid having to disclose relevant fee information up front on the short form disclosure.

Additionally, the Bureau believed that the incidence-based portion of the short form, though it would have mandated a specific metric to determine which additional fees may be listed, would have provided some flexibility to industry participants to disclose up to three more fees on the short form particular to each prepaid account product and that may be imposed for features that could be appealing to consumers.

Proposed § 1005.18(b)(2)(i)(B)(8)(I). Accordingly, proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would generally have required disclosure of up to three fees, other than any of those fees 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.

For existing prepaid account products, proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would have required 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 by consumers of that particular prepaid account product. In accordance with the timing requirements of proposed § 1005.18(h), a financial institution would have had to execute any updates required by the rules within 90 days for disclosures provided in written, electronic, or oral 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, would have had to be revised when the financial institution printed new packaging material for its prepaid account access devices, in accordance with the timing requirements in proposed § 1005.18(h). 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 had to include such changes, in accordance with the timing requirements in proposed § 1005.18(h).

The Bureau believed that it was important for the incidence-based fee disclosure to list a prepaid account product's most commonly incurred fees. The Bureau, however, recognized that financial institutions would need time to update disclosures upon assessing whether any changes to the incidence-based fee disclosure are needed, although the Bureau expected such changes would be infrequent. The Bureau believed such updates would be easier for disclosures provided in electronic form or in written form outside of a retail setting. Thus, the Bureau proposed that financial institutions would have had to make updates to written, electronic, and oral disclosures within 90 days to ensure that consumers receive up-to-date incidence-based fee disclosures. The Bureau, however, recognized 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 therefore proposed that financial institutions would have been able to implement updates on packaging material whenever they are printing new stock during normal inventory cycles. The Bureau acknowledged that the 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, did not believe that this discrepancy would significantly impact a consumer's decision regarding which prepaid account product to acquire since consumers would most likely be comparing the disclosures for two distinct products, and not reviewing disclosures side-by-side for the same prepaid account product found in different acquisition channels.

The Bureau also recognized 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, believed that imposing a cut-off date after which sale or distribution of out-of-date retail packages would be prohibited could be overly burdensome.

The Bureau also proposed to adopt several comments to provide additional guidance on incidence-based fee disclosures. Proposed comment 18(b)(2)(i)(B)(*8*)–1 would have provided guidance regarding the number of incidence-based fees to disclose in the short form, including when no fees, more than three, or less than three fees meet the criteria in the definition of incidence-based fees. Proposed comment 18(b)(2)(i)(B)(*8*)–2 would have set forth how to determine which fees were incurred most frequently in the prior 12-month period and would have also clarified that the price for purchasing or activating a prepaid account could qualify as an incidence-based fee. Proposed comment 18(b)(2)(i)(B)(*8*)(I)–3 would have provided guidance regarding the disclosure of incidence-based fees in accordance with the proposed effective date regime in proposed § 1005.18(h). Proposed comment 18(b)(2)(i)(B)(*8*)(I)–4 would have explained how to disclose incidence-based fees when disclosing multiple service plans on a short form disclosure that would have been permitted by proposed § 1005.18(b)(3)(iii)(B). Proposed comment 18(b)(2)(i)(B)(*8*)(I)–5 would have explained that proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would have permitted a reprint exception that would not have required 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 were otherwise accurate, but would have required that, if a financial institution determines that an incidence-based fee listed on a short form disclosure in a retail store no longer qualified as one of the most commonly incurred fees and made the appropriate change when printing new disclosures, any packages in retail stores that contained the previous incidence-based fee disclosure could still be sold in compliance with proposed § 1005.18(b)(2)(i)(B)(*8*)(I).

Proposed § 1005.18(b)(2)(i)(B)(8)(II). Recognizing that new prepaid products have no prior fee data history, the Bureau also proposed additional requirements to address such circumstances. Proposed § 1005.18(b)(2)(i)(B)(*8*)(II) would have required 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. 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 believed that they nonetheless would have a reasonable expectation as to which fees would be incurred most frequently. Thus, financial institutions would have been required, 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. Proposed comment 18(b)(2)(i)(B)(*8*)(II)–1 would have explained that the financial institution should use available data to reasonably anticipate what fees should be disclosed and provided an example to illustrate.

Proposed § 1005.18(b)(2)(i)(8)(III). The Bureau also proposed additional requirements for when a particular prepaid account product's fee schedule changes. Specifically, proposed § 1005.18(b)(2)(i)(B)(*8*)(III) would have required that, if a 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 proposed § 1005.18(b)(2)(i)(B)(*8*)(I), it would have had 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 have represented the most commonly incurred fees for the remainder of the current 12-month period, it would have had 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) also would have required 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 institution is printing new packaging material, in accordance with the timing requirements of proposed § 1005.18(h). 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 have provided an example demonstrating the impact of a fee change on an existing prepaid account product's incidence-based fee disclosure.

The Bureau noted in the proposal that its proposed model forms did not isolate or identify these incidence-based fees in a way that would have distinguished them from the other fees, outside the top-line, disclosed under proposed § 1005.18(b)(2)(i)(B)(*5*) through (*7*). Thus, the Bureau explained, 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*) through (*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 pre-proposal consumer testing, the Bureau tested language identifying the incidence-based fees as such, but this language was often ignored or misunderstood by participants.[408] Nevertheless, the Bureau recognized that some variation on the short form fee disclosure could lead to confusion, and thus the Bureau sought comment on whether the model forms should more clearly indicate to a consumer the meaning of the incidence-based fees.

The Bureau also recognized 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 acknowledged that basing the incidence-based fees determination on fee incidence might not make sense for all prepaid products. Thus, the Bureau sought comment on all aspects of this incidence-based fees proposal. Among other things, the Bureau specifically solicited 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, and 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.

Comments Received

Numerous industry commenters spanning a panoply of interests in the prepaid industry including trade associations, issuing banks, credit unions, program managers, a law firm commenting on behalf of a coalition of prepaid issuers, and other parties involved in the prepaid industry, as well as several employers, addressed the proposed requirement to disclose incidence-based fees, with the vast majority recommending the Bureau eliminate this aspect of the short form disclosure. Their specific concerns and criticisms are discussed in detail below. Industry commenters, however, generally supported the proposed reprint exception. That exception would have excused financial institutions from annually updating the incidence-based fees for disclosures provided on a prepaid account product's packaging material, for example, in retail stores, until the financial institution prints new packaging material.

Industry commenters offered myriad reasons in support of their recommendation that the Bureau not finalize the requirement to disclose incidence-based fees. Industry commenters' concerns, summarized here, are discussed in more detail in the paragraphs that follow. Some said that the disclosure would heavily burden industry with what they viewed to be little, if any, benefits to consumers and, if finalized as proposed, would likely cause some prepaid providers to exit the market. Many said that this disclosure defeats the uniformity in the short form and thus could inhibit consumers' ability to comparison shop. Many others asserted that the disclosure would create a discrepancy between fees disclosed online and those disclosed on packaging for financial institutions taking advantage of the reprint exception. Some industry commenters suggested that the incidence-based fees disclosed may not be germane to all consumers. Some also asserted the disclosure would be redundant because the incidence-based fees can be found elsewhere, such as on the long form disclosure.

Specifically, some industry commenters voiced concern regarding consumer comprehension of the significance of incidence-based fees. They said that the disclosure defeats uniformity within and comparison shopping among short form disclosures because incidence-based fees would vary among different prepaid account programs and over time even for the same program, which they contended would mislead consumers into thinking that absence of a certain fee on the short form may mean the feature is not offered. A few commenters said that because of differences in customer usage, some of the disclosed incidence-based fees would not be germane to some consumers. Some industry commenters contended that the Bureau's pre-proposal consumer testing

[408] *See* ICF Report I at 35.

showed that consumers did not understand if they would incur incidence-based fees, that frequency of incidence determined disclosure of one feature over another, or how the information was relevant to them in selecting a prepaid account. One industry commenter said that addressing this confusion with an explanation of these topics in the short form disclosure would take up valuable space and create its own confusion, but that eliminating the requirement to disclose incidence-based fees would solve this problem while reducing the overwhelming amount and complexity of the information required in the short form disclosure.

Some industry commenters questioned the Bureau's rationale for the disclosure of incidence-based fees in the proposed rule, saying that the risk of fee evasion by industry is unwarranted in the current competitive prepaid marketplace.

Some industry commenters questioned the validity of the data upon which incidence-based fees would be calculated, saying incidence-based fees were unlikely to change significantly absent structural changes to the program and that, because prepaid accounts are typically short-lived, annual assessment would not provide a sufficient basis from which to extrapolate meaningful information.

Some industry commenters, including issuing banks, credit unions, and industry trade associations, asserted that requiring disclosure of incidence-based fees for products distributed in bank branch settings is unnecessary as availability of the long form disclosure prior to acquisition and bank personnel to answer questions both encourage more thoughtful consumer review. Some of these industry commenters claimed incidence-based disclosures would disproportionately burden community banks and credit unions because they use outside vendors to handle disclosures, creating higher costs and unfair due diligence demands on banks to oversee the vendors. Some said that, without an exemption for small issuers, compliance costs may force these providers out of the market. A program manager for government benefit account programs recommended an exemption for accounts arranged for or issued by government agencies, saying agencies usually each offer only one prepaid account program and consequently, consumers do not need disclosures to be provided in a format designed to facilitate comparison of multiple prepaid accounts offered by the agency. Alternatively, the commenter recommended permitting government agencies to aggregate their data for incidence-based fees rather than analyzing each program separately.

Many industry commenters focused on the perceived burden of this proposed requirement, saying the disclosure would be complex, costly, and difficult to implement. One industry commenter said the fear that any changes to incidence-based fees will require changes to packaging and marketing materials would stifle innovation and development of new services or new prepaid products. Another recommended the Bureau commission a study to confirm that the benefits of the incidence-based disclosure outweigh the burden. Many industry commenters said it would be a major undertaking to identify and calculate incidence-based fees, with some saying the proposed annual update alone would necessitate a massive amount of new procedures, controls, system updates, and packaging design changes.

Some questioned the meaning in the proposed rule of the term ''separate prepaid account program,'' saying initial and ongoing identification and calculation of incidence-based fees would be particularly cost prohibitive for entities with hundreds or thousands of separate prepaid account programs, as they said is the case with certain companies that issue or manage payroll card account programs. Some commenters involved in payroll card account programs queried whether the proposed rule would require them to calculate incidence-based fees for each individual program negotiated separately with an employer or whether they could aggregate data across programs. For example, one payroll card account program manager with 4,000 individual employer programs said every annual printing would cost $1 per cardholder such that annual printing costs alone would be a multimillion dollar undertaking.

Some industry commenters questioned specific aspects of the proposed incidence-based fee disclosure. A few commenters questioned the proposed 90-day period for updates, saying it was unclear whether both assessing and updating incidence-based fees would be required in that time frame and recommended various extensions of the period, for example, to 120 days for both assessment and updating, 12 months after analysis to update, or within a reasonable time after a change. A trade association commenter said the requirement to disclose additional fee types would pose a ''compliance trap'' because financial institutions could be second-guessed on how they categorized them.[409] Another industry commenter said financial institutions would have to justify their categorization and tracking of fees to examiners, even when vendors perform that service (as, they said, is the case with many small banks). Another commenter said the ''reasonable'' standard for estimating incidence for new products would be complicated and inexact, with no guarantee of accuracy but would function as a de facto strict liability standard.

Many industry commenters responded to the Bureau's solicitation of comments regarding alternatives to the proposed incidence-based fee disclosure. They variously recommended the following in the short form disclosure: A general statement that other fees may apply, disclosing all fees, or adding to the static fees already disclosed on the short form up to three more common fees chosen by the financial institution or determined by the Bureau on the basis of research. Some industry commenters recommended modifying the proposed update schedule by requiring the update every two years, or requiring it only when there is a fee change which would require the financial institution to update the prepaid account terms, packaging, and disclosures in any case.

A few industry commenters addressed the Bureau's queries regarding whether the disclosure should be based on assessment of fee frequency, as proposed, or fee revenue. A trade association and an issuing bank said they had no preference, as long as the criteria are clear, easy to determine, and not subject to annual updating. A program manager also said it had no preference as it has the data necessary for either calculation, and the cost and compliance burden would be the same either way.

The proposal sought comment on a de minimis threshold below which changes to the incidence ranking would not require form revisions. While some industry commenters supported this idea, others went further and advocated for a general de minimis threshold that would not require disclosure of additional fee types below a threshold set by the Bureau. A trade association, a payment network, an issuing bank, and several program managers urged the Bureau to adopt a general de minimis exclusion from the incidence-based fee

[409] While proposed § 1005.18(b)(2)(i)(*8*)(I) would have required disclosure of up to three *fees,* proposed comment 18(b)(2)(i)(B)(*8*)(I)–2 would have explained that, in determining incidence-based fees, financial institutions would have had to total the incidence for each *fee type* incurred during the prescribed period.

requirement. The issuing bank said this would help to ensure that consumers are provided with information on the short form disclosure that is most likely to be relevant to their actual use of the prepaid account. Other commenters explained that, in general, very little revenue is generated from fees paid by consumers that are not already reflected on the proposed short form, other than from the purchase price and activation fees (when charged), though there are outliers in certain circumstances. One commenter expressed concern that because so few consumers use the services associated with these other fees, the incidence-based fees required to be disclosed would likely change every year due to small shifts in consumer usage.

A trade association recommended the Bureau adopt a safe harbor to the proposed incidence-based fee requirement that allows financial institutions to disclose all fees on the short form, with a de minimis exception for fees that are imposed on fewer than 25 percent of accounts. A credit union similarly recommended that the Bureau give financial institutions the option of listing all fees on the short form, which it said would be more transparent to consumers and more beneficial particularly for issuers who charge a limited number of fees on their prepaid accounts.

Several consumer group commenters, on the other hand, supported the proposed disclosure of incidence-based fees. These commenters said that requiring disclosure of incidence-based fees would prevent financial institutions from designing their fee schedules to minimize fees required to be disclosed on the short form and to maximize those that are only listed on the long form disclosure, where consumers are less likely to see them. They also said the disclosure of incidence-based fees would help consumers evaluate and avoid the most-commonly charged fees.

The consumer group commenters also recommended some changes to the proposed requirement. They all recommended requiring calculation of the fees based on revenue, rather than frequency of incidence, saying it is more important to warn consumers about high fees that impact small numbers of consumers rather than small fees charged often. They warned that placing more importance on a commonly incurred but inexpensive fee, rather than a rare expensive fee, could result in consumers paying more for fees that are not prominently displayed. They said the rule could incent some providers to bring down cost of the most common fees in favor of higher fees on those incurred less often, thus hiding potential costly charges.

One consumer group commenter recommended eliminating the 12-month lookback period for assessment of incidence-based fees because an expensive fee, such as a legal process fee, may be charged sporadically but could devastate a consumer. That commenter also argued against a de minimis exception, saying any fee so small or so rarely incurred should be eliminated. Moreover, it said, a de minimis threshold would likely eliminate disclosure of infrequent but costly fees, such as legal fees for garnishment. The consumer group also suggested requiring standardized use of the term ''bill payment'' for incidence-based fees. Another consumer group recommended permitting a financial institution that charges a total of four other fees to disclose all four of those fees in lieu of disclosing three of those fees and the statement regarding other fees.

Regarding purchase price, one consumer group commenter agreed that, as the Bureau had proposed, the purchase price for a prepaid account should be a potential incidence-based fee and not be required as a static fee because of the limited space in the short form and other parts of the packaging can disclose this information. Moreover, the commenter said, it is a one-time fee and consumers will take notice of the price they have to pay for the prepaid account. On the other hand, another consumer group commenter recommended that the purchase price be required to be disclosed as a static fee on the short form or, alternatively, as an incidence-based fee. It said disclosure of this fee was important because almost half of regular GPR card users buy a new card when their funds are exhausted, so the purchase price is a frequent expense. Further, it stated that simply because the purchase price is deducted from the amount of cash loaded onto a prepaid card does not mean that consumers understand this fee.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(*8*), renumbered as § 1005.18(b)(2)(ix), with substantial modifications, largely in response to comments received. First, as discussed above, the Bureau is moving the disclosure's location on the short form so that it appears immediately after the statement regarding the number of additional fee types charged pursuant to final § 1005.18(b)(2)(viii)(A). The Bureau believes that locating these disclosures together will help consumers see their connection and increase understanding of why the fee information specified under final § 1005.18(b)(2)(ix) may vary among prepaid account programs, and thus enhance the use of short form disclosures for comparison shopping. The Bureau believes this will also make the disclosure of the total number of additional fee types under final § 1005.18(b)(2)(viii) more valuable to consumers by providing some additional specific information.

Second, the Bureau is finalizing several changes to the nature of the disclosure. In particular, the Bureau is requiring disclosure of two fee types [410] instead of three, and has renamed this requirement the ''disclosure of additional fee types.'' In addition, the Bureau is requiring that the criteria for determining fee types be based on which categories generate the highest revenue from consumers, rather than highest incidence of consumer use as proposed. As discussed above, the Bureau compiled a list of fee type examples to provide guidance to financial institutions and to help facilitate their categorization of additional fee types for satisfying the requirements in final § 1005.18(b)(2)(viii)(A) and (ix).

Third, the Bureau has made a number of other adjustments intended to reduce compliance burden relative to the proposal regarding the tracking and reporting of the additional fee types. These adjustments are in addition to proposed burden-reducing measures that the Bureau is adopting in the final rule, such as the exemption from having to update the listing of additional fee types on previously printed packaging materials, pursuant to the update printing exception in final § 1005.18(b)(2)(ix)(E)(*4*). Additional burden-reducing measures in the final rule include a 24-month (rather than annual) cycle for assessing and updating the disclosures and permitting financial institutions to track revenue on a consolidated basis across multiple prepaid account programs that share the same fee schedule. The final rule also permits issuers not to provide

[410] See comment 18(b)(2)(viii)(A)–2 for an explanation of the term ''fee type'' and a list of examples of fee types and fee variations within those fee types that a financial institution may use when determining both the number of additional fee types pursuant to final § 1005.18(b)(2)(viii)(A) and any additional fee types to disclose pursuant to final § 1005.18(b)(2)(ix). Final comment 18(b)(2)(viii)(A)–4 also clarifies that a financial institution must use the same categorization of fee types in the number of additional fee types disclosed pursuant to final § 1005.18(b)(2)(viii) and in its determination of which additional fee types to disclose pursuant to final § 1005.18(b)(2)(ix).

disclosures for any fee categories that fall below 5 percent of consumer-generated revenues, as well as excluding certain other fee categories. Finally, the Bureau has replaced the proposed commentary with a number of new comments to provide additional clarification and guidance on the requirements set forth in final § 1005.18(b)(2)(ix).

The Bureau has considered the industry comments objecting to the proposed disclosure of incidence-based fees [411] and recommending their elimination from the final rule. It has also considered the alternatives recommended by some industry commenters and suggestions for improvement by consumer group commenters. The Bureau has made extensive refinements to the proposed framework based in substantial part on this feedback but continues to believe that there is value to maintaining a dynamic element on the short form and that disclosing specific additional fee information that is updated on a periodic basis is the best way to provide such dynamic information, as discussed further below.

As discussed in detail in the next few paragraphs, the Bureau continues to believe it is important that financial institutions disclose to consumers certain fee types not otherwise listed on the short form. The Bureau believes that this may be particularly important for certain virtual wallets and other products covered by this final rule that may have pricing structures that do not mirror those of GPR cards or other more traditional prepaid products, as well as for capturing potential major evolutions in pricing structures on traditional products that may occur in the future. Further, the final rule provides some flexibility to financial institutions that have fewer than two fee types required to be disclosed pursuant to final § 1005.18(b)(2)(ix)(B) to disclose additional fee types of their choice, such as those particular to their prepaid account program and imposed for features that could be appealing to consumers. It also provides additional flexibility for financial institutions to disclose the names and fee amounts of the discrete fee variations for additional fee types with two or fewer fee variations pursuant to final § 1005.18(b)(2)(ix)(C).

First, as pointed out by some consumer group commenters, the requirement to disclose additional fee types in the short form disclosure creates a dynamic disclosure designed to reduce incentives for manipulating fee structures to reduce the cost of the most common fee types in favor of higher fees on fee types incurred less often, thus hiding potential costly charges. The Bureau is not convinced, as asserted by some industry commenters, that market forces alone would adequately control for potential fee manipulation. Requiring disclosure of additional fee types in the short form will help prevent financial institutions from minimizing the cost of the fees required to be disclosed in and outside the short form by final § 1005.18(b)(2)(i) through (vii) and (5) in favor of higher fees for fee types that would only be required to be disclosed in the comprehensive long form disclosure, where the Bureau believes consumers are much less likely to see them before acquiring a prepaid account. In particular for prepaid accounts sold at retail, consumers may not see the additional fee types disclosed only in the long form and, thus, could be more likely to incur such fees unknowingly. Putting consumers on notice of additional fee types that, outside of those excluded from disclosure pursuant to final § 1005.18(b)(2)(ix)(A)(*1*) through (*3*), generate the highest revenue from consumers for the particular prepaid account or across prepaid account programs that share the same fee schedule will alert consumers to account features for which they may end up incurring a significant cost.

Second, eschewing full standardization in a static short form disclosure in favor of the dynamic disclosure of additional fee types enables the disclosure to capture market changes and innovations. In this way, the short form is capable of reflecting over time significant changes in consumer use patterns that affect the amount of revenue generated for new features. Disclosing additional fee types in the short form allows the disclosure to reflect the advent of new fee types that consumers may come to incur frequently and for significant cost that, without this requirement, otherwise would be prohibited from disclosure in the short form and thus could render it outdated and of diminished value to consumers over time. This same dynamism also permits disclosure of fees for certain types of prepaid accounts, such as mobile wallets, whose currently scant fee structures may not otherwise be represented in the short form. Further, requiring disclosure of additional fee types allows the short form to capture future fee types charged by new products and under new pricing models that emerge over time. Without this mechanism, the information provided to consumers in the short form disclosure may become ossified and anachronistic over time absent additional rulemakings by the Bureau to update the required elements of the short form.

The Bureau recognizes that there are some tradeoffs for consumers and for industry in providing the disclosures, but believes those disadvantages are outweighed by the benefits of these disclosures to consumers. Moreover, the Bureau believes that the changes it has made in the final rule address many of the concerns raised by industry commenters and also substantially reduce the burden on financial institutions related to providing these disclosures relative to the proposal.

One objection raised by industry commenters is that, because the additional fee types disclosures will be the only non-standardized elements of the short form, the lack of uniformity will cause consumer confusion and prevent comparison shopping. As discussed in the section-by-section analysis of § 1005.18(b)(2)(viii) above, the Bureau had consumer tested language to explain how the incidence-based fees were selected for disclosure on the short form but found that the information did not track well with consumers. The Bureau believes that the final rule substantially reduces this problem by linking the disclosures in final § 1005.18(b)(2)(viii) and (ix) by using a transition statement between the two (''Here are some of them:'') as discussed above, making clear that the specific additional fee types listed are examples of additional types of fees not otherwise disclosed on the short form. While the short form will not specifically explain why those two particular fee types were selected for disclosure, consumers will be able to understand that this portion of the form is variable across prepaid account programs, evaluate the specific information provided for potential applicability to their expected prepaid account use, and seek more information. The Bureau does not believe it necessary for consumers to understand the calculations behind and the specific purpose of the additional fee types to benefit from their disclosure.

Some commenters said the proposed reprint exemption would create discrepancies among short form disclosures for the same prepaid account program depending on where a consumer views the form (for example, at retail versus online). However, in

[411] Hereinafter, the Bureau uses the final rule term ''additional fee types'' in place of ''incidence-based fees,'' unless the discussion calls for specific reference to the term from the proposed rule.

addition to the modifications to the final rule discussed above adding an explanatory heading above the listing of additional fee types, the Bureau believes it unlikely most consumers will be comparing short form disclosures for the same prepaid account program in different mediums. Moreover, a large majority of industry commenters favored the reprint exemption, as it reduces burden, and the Bureau believes it is preferable to retain this exemption in the final rule as opposed to removing it. The Bureau does not believe that the additional fee type disclosures required by the final rule will stifle innovation, as suggested by industry commenters, particularly given the reprint exemption and the additional explanation the Bureau has provided in the supplementary information for this final rule regarding use of change-in-terms notices pursuant to § 1005.8(a) and notice of new EFT services pursuant to § 1005.7(c). See, *e.g.,* the section-by-section analysis of § 1005.18(b)(2)(ix)(E)(*4*) below.

With regard to comparison shopping, the Bureau believes that having the same disclosures in the bulk of the short form, including the static fees and informational statements, will create more than sufficient consistency to facilitate consumer comparison shopping based on key fees in the marketplace, despite some variance introduced by the disclosure of two additional fee types. At the same time, the disclosure of additional fee types will ensure that consumers are made aware of significant fee types relating to each particular prepaid account program. Also, the transition statement linking the statement regarding the number of additional fee types and the disclosure of additional fee types provides sufficient information to orient consumers to these disclosures and will help dispel the consumer confusion that concerned industry commenters, particularly in light of consumer testing of explanations of the criteria for selection of additional fee types that proved ineffective.

To preserve standardization and consistency across short form disclosures, the Bureau declines to exempt prepaid accounts distributed in branches, particularly those of community banks and credit unions, and by government agencies from the requirement to disclose additional fee types. In addition to preserving standardization across short form disclosures, the Bureau is concerned that creating an individualized disclosure regime for different acquisition settings would create a patchwork regulatory regime, which is what this rule seeks to eliminate. The Bureau believes it is important to make the short form disclosure as informative as possible considering its space constraints; the disclosures regarding additional fee types will encourage consumers to review the long form for more detailed information in a way that simply providing the long form disclosure will not do.

In finalizing this provision, the Bureau attempted to maximize the usefulness of the disclosure for consumers while exacting the minimum burden on industry. As discussed above and below, the final rule incorporates many burden-reducing measures relative to the proposal, such as excluding certain fees from potential disclosure as additional fee types altogether (final § 1005.18(b)(2)(ix)(A)(*1*) and (*3*)), allowing for a consolidated calculation of additional fee types to occur across all prepaid account programs that share the same fee schedule (final § 1005.18(b)(2)(ix)(A)), increasing the timeframe for data collection and assessment/update from one year to 24 months (final § 1005.18(b)(2)(ix)(D) and (E)), and incorporating a de minimis revenue threshold to exclude from potential disclosure fee types that fall below this threshold (final § 1005.18(b)(2)(ix)(A)(*2*)). The Bureau is skeptical that this disclosure requirement will prompt financial institutions to exit the prepaid market as suggested by some commenters. Rather, the Bureau believes that the burden imposed on financial institutions by final § 1005.18(b)(2)(ix) is manageable. Also, with regard to comments that the disclosure of additional fee types in the short form is redundant of information found in the long form disclosure, the Bureau believes these fees merit disclosure in the short form as it is the disclosure most likely to be reviewed pre-acquisition by consumers.

Each aspect of final § 1005.18(b)(2)(ix) is addressed in turn below, together with other specific comments from both industry and consumer groups.

Determination of Which Additional Fee Types To Disclose Pursuant to § 1005.18(b)(2)(ix)(A)

Final § 1005.18(b)(2)(ix)(A) requires disclosure of the two fee types that generate the highest revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in final § 1005.18(b)(2)(ix)(D) and (E), excluding (*1*) fees required to be disclosed pursuant to final § 1005.18(b)(2)(i) through (vii) and (5); (*2*) any fee types that generated less than 5 percent of the total revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the relevant time period; and (*3*) any finance charges as described in final Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in final § 1026.61.

Specific aspects of this provision, and related commentary, are discussed in turn below.

Two additional fee types. Final § 1005.18(b)(2)(ix) requires the disclosure of fee types, rather than individual fees. Requiring financial institutions to disclose additional fee types for both final § 1005.18(b)(2)(viii) and (ix) should further reduce burden on industry relative to the proposal.[412] First, final § 1005.18(b)(2)(viii) and (ix) are coordinated such that both provisions require disclosure of additional fee types; therefore industry will use the same criteria to formulate the disclosures for both provisions thus avoiding the cost of maintaining separate rubrics.[413] Second, organizing the disclosures around fee types rather than discrete fees simplifies the organizational process by reducing the number of distinct fee categories financial institutions must track and analyze in determining the disclosure of additional fee types. Third, in response to industry commenters' concerns about how to categorize fee types, final comment 18(b)(2)(viii)(A)–2 lists examples of fee types and the breakdowns of discrete fee variations within fee types that a financial institution may use when determining the disclosures required by both final § 1005.18(b)(2)(viii) and (ix). The Bureau balanced multiple considerations in compiling this list of examples, including existing industry practices with regard to fee types, the accounting burdens associated with relatively narrower or broader definitions of fee types, and the potential benefits to both industry and consumers in using narrower definitions of fee types to communicate information about specific account features and fees. The Bureau believes the resulting list strikes an appropriate balance by capturing categories and terms employed by the prepaid industry itself that will be most useful to financial

[412] As discussed in the section-by-section analysis of § 1005.18(b)(2)(viii)(A), the Bureau believes this approach addresses a number of the concerns raised by commenters regarding the proposed disclosure of the total number of additional fees.

[413] *See* final comment 18(b)(2)(viii)(A)–4.

institutions and consumers in determining and understanding additional fee types. The Bureau is providing flexibility to financial institutions to fashion appropriate names for other fee types, including fee types for services that do not yet exist in the prepaid marketplace.

The Bureau does not believe the use of fee types will compromise the benefit to consumers of the disclosure required by final § 1005.18(b)(2)(ix), as suggested by some commenters. While it is true that the additional fee types disclosed will constitute broader categories than disclosure of individual fee types, such as the disclosure of fees for bill payment generally versus a specific fee for regular or expedited delivery of a bill payment, there are benefits and detriments to either approach for both consumers and financial institutions and as discussed above, the Bureau believes the approach in the final rule strikes an appropriate balance. To allow financial institutions flexibility to disclose discrete fee variations, pursuant to final § 1005.18(b)(2)(ix)(C), financial institutions with additional fee types with two or fewer fee variations may disclose those fee variations by name and fee amount. Similarly, final § 1005.18(b)(2)(ix)(B) permits financial institutions to disclose fee types of their choice if they have fewer than two fee types that require disclosure under final § 1005.18(b)(2)(ix), thereby creating opportunities for more transparent disclosure to consumers and greater flexibility and control for financial institutions, including the option of highlighting innovative and unique product features or features that financial institutions project may require disclosure by the next reassessment and update deadline.

Also in the final rule, the Bureau is requiring disclosure of two additional fee types pursuant to final § 1005.18(b)(2)(ix)(A), rather than three as proposed. The Bureau has made this modification, in part, to create additional space on the short form for other disclosures required by the final rule, such as the statement associated with the alternate disclosure of a variable periodic fee pursuant to final § 1005.18(b)(3)(ii). The Bureau also believes some financial institutions will find that this modification will impose less burden on an ongoing basis with respect to recalculation and updates than the rule as proposed would have done. The Bureau does not believe that the disclosure of two additional fee types rather than three will reduce the effectiveness of the short form disclosure for consumers, especially when balanced with other measures the Bureau has taken in the final rule to inform consumers of other fee types, such as the requirement under final § 1005.18(b)(2)(vi) to generally disclose two customer service fees (for interactive voice response and live customer service) instead of the highest fee that would have been required under the proposed rule.

Final comment 18(b)(2)(ix)(A)–1 clarifies that a prepaid account program that has two fee types that satisfy the criteria in final § 1005.18(b)(2)(ix)(A) must disclose both fees. If a prepaid account program has three or more fee types that potentially satisfy the criteria in final § 1005.18(b)(2)(ix)(A), the financial institution must disclose only the two fee types that generate the highest revenue from consumers. This comment cross-references final comment 18(b)(2)(ix)(B)–1 for guidance regarding the disclosure of additional fee types for a prepaid account with fewer than two fee types that satisfy the criteria in final § 1005.18(b)(2)(ix)(A).

Final comment 18(b)(2)(ix)(A)–1 also cross-references final comment 18(b)(2)(viii)(A)–2 for guidance on and examples of fee types. To address an industry commenter's concerns regarding categorization of fee types, comment 18(b)(2)(viii)(A)–2 provides concrete guidance on how to categorize fee types. The comment provides an explanation of the term ''fee type'' and examples of more than a dozen fee types, along with fee variations within those fee types, that a financial institution may use when determining both the number of additional fee types charged pursuant to final § 1005.18(b)(2)(viii)(A) and any additional fee types to disclose pursuant to final § 1005.18(b)(2)(ix). In response to the recommendation of one consumer group commenter, this comment provides standardized terms for many fee types, including bill payment. Final comment 18(b)(2)(ix)(A)–2 explains that commonly accepted or readily understandable abbreviations may be used as needed for additional fee types and fee variations disclosed pursuant to final § 1005.18(b)(2)(ix), and offers several example to illustrate this concept.

Highest revenue. Upon consideration of the comments and additional analysis, the Bureau has concluded that determining the disclosure of additional fee types on the basis of revenue is superior to an incidence-based system. The Bureau agrees with consumer group commenters that there may be more merit in alerting consumers to fees from which the financial institution makes the highest revenue, even if those fees impact fewer consumers, rather than lower fees incurred by consumers more frequently. Also, as raised by consumer group commenters, the rule as proposed could incent some financial institutions to reduce the cost of the most common fee types in favor of higher fees on fee types incurred less often, thus hiding potential costly charges. Moreover, all industry commenters who responded to the issue were neutral as to whether the disclosure should be based on incidence or revenue because they tracked both. To the extent that some financial institutions do not track both, the Bureau believes that it is more likely they track revenue and, regardless, that it will be simpler and more straightforward for financial institutions to calculate fee revenues rather than fee incidence.

The Bureau also believes that there is additional information conveyed in using revenue; namely that a fee type's revenue is a measure of the impact of that fee type on consumers—it is the amount, in dollars, of the cost of that feature to consumers. In contrast, an incidence-based approach could have led to disclosure of fee types that were commonly incurred but had a low impact because the fee amount was low.

Revenue from consumers. The Bureau has included specific reference in the final rule to ''revenue from consumers'' to assure clarity that the revenue required for calculation for the disclosure of additional fee types required by final § 1005.18(b)(2)(ix) is based on fee types that the financial institution may charge consumers. Final comment 18(b)(2)(ix)(A)–3 clarifies that the calculation excludes other revenue sources such as revenue generated from interchange fees and fees paid by entities that sponsor prepaid account programs for financial disbursements (*e.g.,* government agencies and employers). The comment also explains that the calculation excludes third-party fees, unless they are imposed for services performed on behalf of the financial institution.

Assessing revenue within and across prepaid account programs to determine disclosure of additional fee types. Some industry commenters said the proposed requirement to calculate incidence-based fees on a program-by-program basis would pose significant cost and burden to them. They explained that some financial institutions administer hundreds or more prepaid account programs, particularly in the payroll and government benefit space, and recommended that financial institutions be permitted to aggregate data rather than analyze the data of each prepaid account program separately. The Bureau continues to believe it is crucial that the

additional fee types disclosed to consumers in the short form reflect consumer usage and cost for a particular prepaid account program. However, the Bureau also recognizes that many payroll card account and government benefit account programs may be considered separate programs but share fee schedules and other terms. Because of the potential burden for determining the additional fee disclosures based on fee revenue data separately for programs that all share the same fee schedule, particularly in the context of payroll card accounts and government benefits accounts, the final rule permits financial institutions to make their additional fee types determination based on the fee types that generate the highest revenue from consumers for a particular prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in final § 1005.18(b)(2)(ix)(D) and (E).

Final comment 18(b)(2)(ix)(A)–4 explains that, if a financial institution offers more than one prepaid account program, unless the programs share the same fee schedule, the financial institution must consider the fee revenue data separately for each prepaid account program and not consolidate the fee revenue data across prepaid account programs. The comment explains that prepaid account programs are deemed to have the same fee schedules if they charge the same fee amounts, including offering the same fee waivers and fee reductions for the same features. The comment also provides examples of how to assess revenue within and across prepaid account programs to determine the disclosure of additional fee types. In addition, the comment explains that, for multiple service plans disclosed pursuant to final § 1005.18(b)(6)(iii)(B)(*2*), a financial institution must consider revenue across all of those plans in determining the disclosure of additional fee types for that program.

The Bureau notes that, financial institutions disclosing only the default service plan for a prepaid account program offering multiple service plans pursuant to final § 1005.18(b)(6)(iii)(B)(*1*) are not required to evaluate revenues or disclose additional fee types under § 1005.18(b)(2)(ix) for service plans other than the default service plan.

Exclusions pursuant to § 1005.18(b)(2)(ix)(A)(1) through (3). As clarified in final comment 18(b)(2)(ix)(A)–5, once the financial institution has calculated the fee revenue data for the prepaid account program or across prepaid account programs that share the same fee schedule during the appropriate time period, it must remove from consideration the categories excluded pursuant to final § 1005.18(b)(2)(ix)(A)(*1*) through (*3*) before determining the fee types, if any, that generated the highest revenue.

Exclusion of fee types required to be disclosed elsewhere pursuant to § 1005.18(b)(2)(ix)(A)(1). Like the proposed rule, the final rule requires financial institutions to exclude from the additional fee types required to be disclosed (and from the number of additional fee types required to be disclosed pursuant to final § 1005.18(b)(2)(viii)(A)) the static fees required to be disclosed in the short form pursuant to final § 1005.18(b)(2)(i) through (vii). A new provision in the final rule, § 1005.18(b)(5), requires the disclosure of certain information, including any purchase price or activation fee for a prepaid account, outside the short form disclosure. Because purchase price and activation fees will thus always be disclosed for prepaid accounts under the final rule, the Bureau does not believe it is necessary or appropriate for such fees to be potentially disclosed as additional fee types under final § 1005.18(b)(2)(ix), as was proposed, and thus has added an exclusion for those fees as well. Final comment 18(b)(2)(ix)(A)–5.i provides further clarification regarding the exclusion for fees required to be disclosed elsewhere, including clarification that fee types such as those for international ATM withdrawals and international ATM balance inquiries are not excluded as potential additional fee types.

De minimis exclusion pursuant to § 1005.18(b)(2)(ix)(A)(2). In the final rule, the Bureau is adopting a de minimis threshold permitting exclusion from the additional fee types required to be disclosed of any fee types that generated less than 5 percent of the total revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in final § 1005.18(b)(2)(ix)(D) and (E). Final comment 18(b)(2)(ix)(A)–5.ii provides two examples illustrating the de minimis exclusion; the second example also cross-references final comment 18(b)(2)(ix)(B)–1. While the Bureau solicited comments on whether the final rule should establish a de minimis threshold for updating the proposed incidence-based fees, some industry commenters recommended a de minimis threshold for the disclosure of such fees in general, which is what the Bureau is adopting in this final rule.

The Bureau understands from some industry commenters that many fees that would have qualified under the proposal as additional fee types neither generate significant revenue nor are charged very frequently, though they often relate to services that certain consumers find valuable. With the de minimis threshold, disclosure of such fee types under final § 1005.18(b)(2)(ix) would not be required, although such fee types would be counted in the total number of additional fee types disclosed pursuant to final § 1005.18(b)(2)(viii). Even with a de minimis exclusion, the Bureau believes that this disclosure requirement removes the potential incentive for financial institutions to restructure their fee schedules to avoid disclosure on the short form of certain fees from which they garner significant revenue. The short form disclosure likewise still remains dynamic such that it can reflect significant changes in the marketplace and in consumer use patterns over time. The Bureau believes the dynamic disclosures may also be useful to reflect the fees of certain types of prepaid accounts, such as mobile wallets, that are less likely to charge the types of fees that are represented in the static portion of the short form.

Moreover, with a de minimis threshold, this disclosure requirement will impose less burden relative to the proposal on financial institutions whose potential additional fee types fall below the de minimis threshold, as they may but are not required to disclose or update those fee types under final § 1005.18(b)(2)(ix). The Bureau acknowledges, as pointed out by industry commenters, that some fee types may not be germane to all consumers. The Bureau believes that by applying a de minimis threshold, additional fee types that will not be germane to most consumers are not likely to be required to be disclosed. In response to the consumer group commenter that urged prohibiting any fee so small as to fall below a de minimis threshold, the Bureau states that such request is outside the scope of this rulemaking. The Bureau acknowledges the consumer group commenter's concerns regarding high fees with low incidence, but believes that the de minimis exception, in combination with the disclosure of additional fee types based on revenue, as opposed to incidence, strikes the appropriate balance for the final rule.

After determining that a de minimis exclusion from the requirement to disclose additional fee types would be appropriate, the Bureau considered

recent studies as well as information provided by commenters to determine an appropriate threshold. A 2012 study offered statistics on the aggregate fees paid by cardholders to the prepaid issuer, using data from more than 3 million prepaid cards across 15 programs from one issuing bank.[414] For the payroll card programs, approximately 89 percent of the fees (by value) paid by cardholders were from fees that appear to align with those required to be disclosed on the static portion of the short form under the final rule.[415] The remaining fees ranged between 1 and 7 percent.[416] The study's fee analysis for the various types of GPR card programs were less instructive, having been evaluated across only three general categories (ATM withdrawal fees, maintenance and origination fees, and transaction and other fees).[417]

A 2014 study evaluated transactions on more than 3 million GPR cards from one program manager over a one-year period in 2011–2012.[418] Approximately 96 percent of the fees (by value) paid by cardholders in these programs were from fees that appear to align with those required to be disclosed on the static portion of the short form or outside the short form pursuant to § 1005.18(b)(5) under the final rule.[419] The remaining fees were 1.5 and 2.5 percent.[420] The Bureau notes that the data used in these studies is at least four years old, while fee structures on prepaid accounts have generally been shifting to be both lower and more simplified in recent years.[421]

The Bureau also received information from several commenters regarding fee revenue for a number of prepaid account programs. These commenters provided data mainly for GPR programs, but the Bureau received some information regarding corporate disbursement cards and non-reloadable cards sold at retail as well. Based on this information, across all of these programs except one, fee revenue from consumers amounted to 97 to 99 percent of fee revenue from fees required to be disclosed on the static portion of the short form or outside the short form pursuant to § 1005.18(b)(5) under the final rule. Of the remaining fees, fee revenue ranged from 3 percent to a fraction of 1 percent. In the one other program, 79 percent of fee revenue was from fees required to be disclosed on the static portion of the short form. Of the remaining fees, one comprised approximately 18 percent of fee revenue, while the others ranged between 1 and 2 percent each.

After considering the requests from commenters for a de minimis exclusion and the information available in studies and provided by commenters, the Bureau believes that a 5 percent threshold is appropriate and offers a clear dividing line between fee types that generate only a small amount of revenue from consumers and those that generate significant revenue and thus are most important to be disclosed to consumers prior to acquisition of a prepaid account. Based on this information, the Bureau believes that this threshold level would facilitate compliance and reduce burden, as requested by industry commenters, because a 5 percent de minimis threshold would exclude a majority of the applicable fees (other than the fees disclosed on the static portion of the short form disclosure or outside the short form disclosure pursuant to § 1005.18(b)(5)) that generate a small amount of revenue and would be less germane to consumers. At the same time, the Bureau believes that the 5 percent threshold appropriately tailors the additional fee type disclosure requirement to ensure consumers are alerted to fees that would potentially impose significant costs. In addition, the Bureau believes that the 5 percent threshold helps effectuate the intent of the dynamic portion of the short form disclosure to reflect significant changes in the marketplace and in consumer use patterns over time. The Bureau intends to monitor developments in the market in this area.

Exclusion for certain credit-related fees pursuant to § 1005.18(b)(2)(ix)(A)(3). The final rule requires financial institutions to exclude from disclosure as additional fee types any finance charges as described in final Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in final § 1026.61. Final comment 18(b)(2)(ix)(A)–5.iii clarifies that, pursuant to final § 1005.18(b)(2)(viii)(A)(*2*), such finance charges are also excluded from the number of additional fee types disclosed.

As discussed in more detail below, the Bureau has made a strategic decision to focus the bulk of the short form disclosure on usage of the prepaid account itself (*i.e.,* the asset feature of the prepaid account). The possibility that consumers may be offered an overdraft credit feature for use in connection with the prepaid account is addressed in the short form pursuant to § 1005.18(b)(2)(x), which requires the following statement if such a feature may be offered: ''You may be offered overdraft/credit after [x] days. Fees would apply.'' Consistent with this overall decision, the Bureau believes that it is appropriate to exclude any finance charges related to an overdraft credit feature that may be offered at a later date to some prepaid consumers from the disclosures regarding additional fees under both final § 1005.18(b)(2)(viii) and (ix). If consumers are interested in such a feature, they can look to the Regulation Z disclosures in the long form pursuant to final § 1005.18(b)(4)(vii), discussed below, for more details.

The Bureau notes that the calculation for the disclosure of additional fee types does not include fees that are not imposed with respect to the prepaid account program. For example, any finance charges imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card, where such finance charges are imposed on the separate credit account (not on the prepaid account) would not be included as part of the denominator

[414] *See* 2012 FRB Philadelphia Study at 4, 11, and 26. This study used transactions covering a six-year cycle, but most occurred during the last two years of the data set (2009 and 2010). Programs included three web GPR programs, six GPR programs sold at retail, one GPR program offered in bank branches, and three payroll card programs. *See id.* at 11.

[415] These fees were ATM withdrawal (54 percent), PIN POS purchase (14 percent), balance inquiry (11 percent), maintenance (10 percent). *See id.* at 59 fig. 5.1(B).

[416] These fees were ATM decline (7 percent), PIN POS decline (1 percent), and other/unidentified (3 percent). *See id.*

[417] In the web GPR programs, these fees were ATM withdrawal (26 percent), maintenance and origination (52 percent), and transaction and other (22 percent). *See id.* at 60 fig. 5.2(B). In the retail GPR programs, these fees were ATM withdrawal (17 percent), maintenance and origination (28 percent), and transaction and other (55 percent). *See id.* at 61 fig. 5.3(B). In the FI GPR program, these fees were ATM withdrawal (19 percent), maintenance and origination (68 percent), and transaction and other (13 percent). *See id.* at 62 fig. 5.4(B). The category of transaction and other fees here were calculated as the residual of all fees less origination, maintenance, and ATM withdrawal fees, which include, for example, fees for point-of-sale transactions, balance inquires, paper statements, and calls to a live customer service agent. *See, e.g., id.* at 60 note 2.

[418] *See* 2012 FRB Kansas City Study at 4.

[419] These fees were signature transaction (36.7 percent), PIN transaction (19.5 percent), ATM withdrawal (15.9 percent), monthly fee (8.7 percent), account maintenance (8.5 percent), IVR balance inquiry (5.6 percent), and ATM balance inquiry (1.2 percent). *See id.* at 67 fig. 5.1.

[420] These fees were decline (1.5 percent) and other (2.5 percent). *See id.*

[421] *See, e.g.,* Fed. Reserve Bank of St. Louis, *Cards, Cards and More Cards: The Evolution to Prepaid Cards,* Inside the Vault, at 1, 2 (Fall 2011), *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'').

used in calculating whether the two additional fee types that generated the highest revenue from consumers of a particular prepaid account program qualify for the de minimis exclusion in final § 1005.18(b)(2)(ix)(A)(*2*).

Disclosure of Fewer Than Two Additional Fee Types Pursuant to § 1005.18(b)(2)(ix)(B)

Final § 1005.18(b)(2)(ix)(B) provides that a financial institution that has only one additional fee type that satisfies the criteria in final § 1005.18(b)(2)(ix)(A) must disclose that one additional fee type; it may, but is not required to, also disclose another additional fee type of its choice. A financial institution that has no additional fee types that satisfy the criteria in final § 1005.18(b)(2)(ix)(A) is not required to make a disclosure under final § 1005.18(b)(2)(ix); it may, but is not required to, disclose one or two fee types of its choice. Final comment 18(b)(2)(ix)(B)–1 contains several examples to provide guidance on the additional fee types disclosure pursuant to § 1005.18(b)(2)(ix)(B) for a prepaid account with fewer than two fee types that satisfy the criteria in final § 1005.18(b)(2)(ix)(A). Final comment 18(b)(2)(ix)(B)–2 clarifies that, pursuant to final § 1005.18(b)(3)(vi), a financial institution may not disclose any finance charges as a voluntary additional fee disclosure under final § 1005.18(b)(2)(ix)(B).

The Bureau has included this provision in the final rule to clarify the disclosure requirements for a financial institution that has fewer than two additional fee types that neither exceed the de minimis threshold nor otherwise satisfy the criteria in final § 1005.18(b)(2)(ix)(A), given that some financial institutions may have additional fee types that are not required to be disclosed on the short form pursuant to the de minimis exclusion in final § 1005.18(b)(2)(ix)(A)(*2*). The Bureau declines to permit disclosure of more than two additional fee types or disclosure of all fee types, as was suggested respectively by one consumer group commenter and two industry commenters, because the Bureau believes adding more information will upset the balance between providing the most important information for consumers with the brevity and clarity necessary for optimal consumer comprehension. However this final rule provision permitting voluntary disclosure of fee types when a financial institution has less than two additional fee types that satisfy the criteria of § 1005.18(b)(2)(ix)(A) does provide flexibility for some financial institutions with regard to their disclosure of additional fee types. A financial institution that chooses to disclose fee types under this provision will be able to more fully inform consumers of the features of a particular prepaid account. Moreover, under this provision, a financial institution that is not currently required to disclose any additional fees, but anticipating that in the future one or two of its fee types may exceed the de minimis exception in final § 1005.18(b)(2)(ix)(A)(*2*) has the option to voluntarily disclose those fee types in order to avoid the future need to update its short form disclosures pursuant to final § 1005.18(b)(2)(ix).

Fee Variations in Additional Fee Types Required by § 1005.18(b)(2)(ix)(C)

Final § 1005.18(b)(2)(ix)(C) provides that, if an additional fee type required to be disclosed pursuant to § 1005.18(b)(2)(ix)(A) has more than two fee variations, or when providing a short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(*2*), the financial institution must disclose the name of the additional fee type and the highest fee amount in accordance with § 1005.18(b)(3)(i). It goes on to say that, except when providing a short form disclosure for multiple service plans pursuant to final § 1005.18(b)(6)(iii)(B)(*2*), if an additional fee type has two fee variations, the financial institution must disclose the name of the additional fee type together with the names of the two fee variations and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by final § 1005.18(b)(2)(v) and (vi) and in accordance with final § 1005.18(b)(7)(ii)(B)(*1*). Finally, it states that, if a financial institution only charges one fee under a particular fee type, the financial institution must disclose the name of the additional fee type and the fee amount; it may, but is not required to, disclose also the name of the one fee variation, if any, for which the fee amount is charged, in a format substantially similar to that used to disclose the two-tier fees required by § 1005.18(b)(2)(v) and (vi), except that the financial institution would disclose only the one fee variation name and fee amount instead of two.

Final comment 18(b)(2)(ix)(C)–1 provides examples to illustrate disclosures when a financial institution charges two or more fee variations under a particular fee type, including how to disclose two fee variations with different fee amounts, two fee variations with like fee amounts, more than two variations, and multiple service plans with two fee variations. Final comment 18(b)(2)(ix)(C)–2 provides an example illustrating the options for disclosing a fee type with only one fee variation.

The Bureau has included § 1005.18(b)(2)(ix)(C) in the final rule to create consistency in the short form disclosure by conforming the requirements for disclosure of fee variations for additional fee types with the requirements for disclosure of fee variations for the static fees disclosed pursuant to final § 1005.18(b)(2)(i) through (vii). In addition, this provision will give consumers the opportunity to see more detailed information about fee variations and their respective costs as well as to allow financial institutions flexibility to disclose more details about discrete fee variations. This provision, together with final § 1005.18(b)(2)(ix)(B) which permits financial institutions to disclose fee types of their choice if they have fewer than two fee types that are required to be disclosed under final § 1005.18(b)(2)(ix)(A), creates opportunities for more transparent disclosure to consumers and greater flexibility and control for financial institutions.

Assessment and Update of Additional Fee Types Pursuant to § 1005.18(b)(2)(ix)(D) and (E)

Many industry commenters recommended that the Bureau eliminate the proposed requirement to disclose incidence-based fees based on the burden those commenters said the disclosure would place on industry, particularly with regard to assessing and updating the additional fee types disclosure. As discussed above, however, the Bureau is finalizing the requirement to disclose additional fee types because it believes it will bring significant benefit to consumers. Moreover, the Bureau recognizes that certain industry practices already in place as well as modifications the Bureau is making in the final rule serve to ameliorate some of the burden financial institutions face in complying with final § 1005.18(b)(2)(ix). For example, the Bureau notes that industry commenters have confirmed that prepaid issuers and program managers already generally track and tag all fees imposed on consumers, typically analyzing both frequency and revenue, thereby collecting similar metrics in their normal course of business as those necessary for assessing and updating the disclosure of additional fee types. In addition, the Bureau has attempted to minimize burden on industry by basing the detailed list of examples of fee types and fee variations in final comment 18(b)(2)(ix)(A)–2 on fee classifications

used in the current prepaid marketplace.

The Bureau also notes that, as discussed above, the final rule permits calculation of additional fee types across prepaid account programs with like fee schedules, such that entities that have multiple programs with identical fee schedules, as may be the case particularly with payroll card account and government benefit account programs, may perform a single assessment for all of the programs sharing the same fee schedule.

The specific elements of final § 1005.18(b)(2)(ix)(D) and (E) are discussed in turn below.

Timing of initial assessment of additional fee types disclosure pursuant to § 1005.18(b)(2)(ix)(D). Final § 1005.18(b)(2)(ix)(D)(*1*) provides that, for a prepaid account program in effect as of October 1, 2017, the financial institution must disclose the additional fee types based on revenue for a 24-month period that begins no earlier than October 1, 2014. Final comment 18(b)(2)(ix)(D)(*1*)–1 explains that a prepaid account program that was in existence as of October 1, 2017 must assess its additional fee types disclosure from data collected during a consecutive 24-month period that took place between October 1, 2014 and October 1, 2017. For example, an existing prepaid account program was first offered to consumers on January 1, 2012 and provides its first short form disclosure on October 1, 2017. The earliest 24-month period from which that financial institution could calculate its first additional fee types disclosure would be from October 1, 2014 to September 30, 2016.

Final § 1005.18(b)(2)(ix)(D)(*2*) provides that, if a financial institution does not have 24 months of fee revenue data for a particular prepaid account program from which to calculate the additional fee types disclosure in advance of October 1, 2017, the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the 24-month period that begins on October 1, 2017. Final comment 18(b)(2)(ix)(D)(*2*)–1 provides the example of a financial institution that begins offering to consumers a prepaid account program six months before October 1, 2017. Because the prepaid account program will not have 24 months of fee revenue data prior to October 1, 2017, the financial institution must disclose the additional fee types it reasonably anticipates the prepaid account program will generate over the 24-month period that begins on October 1, 2017. The financial institution would take into account the data it had accumulated at the time of its calculation to arrive at the reasonably anticipated additional fee types for the prepaid account program.

Final § 1005.18(b)(2)(ix)(D)(*3*) provides that, for a prepaid account program created on or after October 1, 2017, the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the first 24 months of the program. The Bureau has included these provision in the final rule to set forth detailed requirements for financial institutions regarding the time frame within which and the data from which to calculate the first assessment of additional fee types required to be disclosed in the short form pursuant to final § 1005.18(b)(2)(ix). As illustrated in the example in final comment 18(b)(2)(ix)(D)(*1*)–1, for prepaid account programs in existence as of the October 1, 2017 effective date of the final rule, the Bureau has built in the additional flexibility of giving financial institutions up to one year, after the 24-month time period from which to draw the data used to calculate the additional fee types, for the financial institution to perform the assessment and prepare its initial short form disclosure. Similar to the proposed rule, the final rule provides flexibility for the financial institution with prepaid account programs in existence prior to the effective date with unavailable data by requiring the financial institution to disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the 24-month period beginning on October 1, 2017. Similarly, for new prepaid account programs created on or after October 1, 2017, the final rule provides flexibility for the financial institution to disclose the additional fee types based on revenue it reasonably anticipates the prepaid account will generate over the first 24 months of the program.

In response to the industry commenter recommending against the reasonableness standard under which a financial institution must project revenues for prepaid account programs in certain circumstances (in final § 1005.18(b)(2)(ix)(D)(*2*) and (*3*) as well as in final § 1005.18(b)(2)(ix)(E)(*3*) discussed below), the Bureau believes that, although financial institutions will not have actual fee revenue data for such products, they nonetheless will have a reasonable expectation as to which fee types will generate the highest revenue. Moreover, the reasonableness standard is a commonly-accepted legal standard employed across diverse areas of law [422] and the Bureau believes it is appropriate to apply here, in lieu of prescribing a complex formula upon which to base additional fee types disclosures for situations such as those set forth above when the a financial institution simply does not have 24 months of data from which to calculate additional fee types.

In response to the industry commenters questioning the validity of data collected over the proposed one-year period and recommending that the Bureau expand the proposed time frame from which to calculate data, the Bureau agrees that 24 months of data, rather than the proposed one year, will improve the data set from which financial institutions calculate the additional fee types and thus is modifying the final rule as set forth above. In response to industry commenters recommending elimination of this disclosure entirely due to the burden of calculating the additional fee types, the Bureau notes that industry commenters have confirmed that prepaid issuers and program managers currently track and tag all fees imposed on consumers, typically analyzing both frequency and revenue, thereby collecting similar metrics in their normal course of business as those necessary for assessing and updating the disclosure of additional fee types and thus, the Bureau does not believe compliance with this requirement will be particularly challenging or burdensome for most financial institutions.

In addition, the Bureau expects that both the de minimis threshold and the change in the reassessment and update timeframes from one year to 24 months will reduce variation over time in the additional fee types that must be disclosed pursuant to final § 1005.18(b)(2)(ix) for each prepaid account or across prepaid account programs that share the same fee schedule, resulting in fewer instances that financial institutions will be required to make changes to the disclosure of additional fee types on their short form disclosures.

Timing of periodic reassessment and update of additional fee types disclosure pursuant to § 1005.18(b)(2)(ix)(E). Final § 1005.18(b)(2)(ix)(E)(*1*) provides a general framework for the requirements to reassess and update the additional fee types disclosures required by final

[422] For example, this standard already is employed in Regulation E in §§ 1005.33(h)(5) and 1005.17(b)(1).

§ 1005.18(b)(2)(ix). Specifically, it states that a financial institution must reassess its additional fee types disclosure periodically as described in final § 1005.18(b)(2)(ix)(E)(*2*) and upon a fee schedule change as described in final § 1005(b)(2)(ix)(E)(*3*). The financial institution must update its additional fee types disclosure if the previous disclosure no longer complies with the requirements of final § 1005.18(b)(2)(ix).

Final § 1005.18(b)(2)(ix)(E)(*2*) sets forth the requirements for the periodic reassessment of the additional fee types disclosures required by final § 1005.18(b)(2)(ix). Specifically, it provides that a financial institution must reassess whether its previously disclosed additional fee types continue to comply with the requirements of final § 1005.18(b)(2)(ix) every 24 months based on revenue for the previous 24-month period. The financial institution must complete this reassessment and update its disclosures, if applicable, within three months of the end of the 24-month period, except as provided in the update printing exception in final § 1005.18(b)(2)(ix)(E)(*4*).[423] A financial institution may, but is not required to, carry out this reassessment and update, if applicable, more frequently than every 24 months, at which time a new 24-month period commences.

Final comment 18(b)(2)(ix)(E)(*2*)–1 provides guidance regarding the periodic assessment and, if applicable, update of the disclosure of additional fee types pursuant to final § 1005.18(b)(2)(ix), including examples addressing reassessment when there is no change in the additional fee types disclosed, when there has been a change in the additional fee types disclosed, and when a voluntarily-disclosed additional fee type later qualifies as an additional fee type required to be disclosed pursuant to final § 1005.18(b)(2)(ix). Final comment 18(b)(2)(ix)(E)(*2*)–2 provides guidance regarding a voluntary reassessment that occurs more frequently than every 24 months, including an example illustrating the concept.

Final § 1005.18(b)(2)(ix)(E)(*3*) sets forth the requirements for the reassessment and update of additional fee types disclosures required by final § 1005.18(b)(2)(ix) when there is a change in the fee schedule of a prepaid account program. Specifically, it provides that if a financial institution revises the fee schedule for a prepaid account program, it must determine whether it reasonably anticipates that the previously disclosed additional fee types will continue to comply with the requirements of final § 1005.18(b)(2)(ix) for the 24 months following implementation of the fee schedule change. If the financial institution reasonably anticipates that the previously disclosed additional fee types will not comply with the requirements of final § 1005.18(b)(2)(ix), it must update the disclosure based on its reasonable anticipation of what those additional fee types will be at the time the fee schedule change goes into effect, except as provided in the update printing exception in final § 1005.18(b)(2)(ix)(E)(*4*). In this case, the stale forms would therefore be accurate except for the fact that the disclosure of additional fee types would not reflect the expectations of the financial institution going forward for which fee types will garner the highest revenue from consumers. The Bureau is thus adopting the update printing exception in final § 1005.18(b)(2)(ix)(E)(*4*) to make clear that a financial institution will not be liable for such a result.

At the same time, as discussed in more detail in the section-by-section analysis of § 1005.18(b) above, the Bureau does not believe that financial institutions change the fee schedules for prepaid accounts often, and that financial institutions may need to pull and replace card packaging in some circumstances anyway.

Final § 1005.18(b)(2)(ix)(E)(*3*) also addresses situations in which an immediate change in terms and conditions is necessary to maintain or restore the security of an account or an EFT system as described in § 1005.8(a)(2) and that change affects the prepaid account program's fee schedule. In that case, the financial institution must complete its reassessment and update its disclosures, if applicable, within three months of the date it makes the change permanent, except as provided in the update printing exception in final § 1005.18(b)(2)(ix)(E)(*4*). Final comment 18(b)(2)(ix)(E)(*3*)–1 provides guidance regarding how to handle the disclosure of additional fee types if a financial institution revises the fee schedule for a prepaid account program, including examples addressing when the financial institution reasonably anticipates that the previously disclosed additional fee types will continue to comply with final § 1005.18(b)(2)(ix) and when it reasonably anticipates that they will not. The comment also clarifies that a fee schedule change resets the 24-month period for assessment; a financial institution must comply with the requirements of final § 1005.18(b)(2)(ix)(E)(*2*) at the end of the 24-month period following implementation of the fee schedule change.

Final § 1005.18(b)(2)(ix)(E)(*4*) provides an exception to the update requirements of final § 1005.18(b)(2)(ix)(E). Specifically, it states that, notwithstanding the requirements to update additional fee types disclosures in final § 1005.18(b)(2)(ix)(E), a financial institution is not required to update the listing of additional fee types disclosed that are provided on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced prior to a periodic reassessment and update pursuant to final § 1005.(b)(2)(ix)(E)(*2*) or prior to a fee schedule change pursuant to final § 1005.18(b)(2)(ix)(E)(*3*). Final comment 18(b)(2)(ix)(E)(*4*)–1 clarifies application of the update printing exception to prepaid accounts sold in retail locations and provides an example illustrating the timing of the exception.

The Bureau agrees with industry and consumer group commenters recommending longer time periods between periodic assessments and updates (if applicable) that the change from one year to two may improve the data set from which to calculate additional fee types because, absent structural changes to the prepaid account program, revenue garnered from additional fee types above the de minimis threshold in final § 1005.18(b)(2)(ix)(A)(*2*) is unlikely to change in a one-year period. Moreover, the Bureau believes changes in the additional fee types disclosed will occur relatively infrequently because the Bureau understands that financial institutions typically do not revise prepaid account fees often. The Bureau also believes this modification will impose a lower ongoing burden on financial institutions with respect to recalculating and updating additional fee types disclosures in addition to smoothing variations in the additional fee types required to be disclosed.

In response to industry commenters' requests for clarification of the time period within which financial institutions must reassess and update (if applicable) the additional fee types disclosure, the final rule explicitly states that both the reassessment and the update must take place within three months of the end of the 24-month period, except as provided in the update printing exception in final § 1005.18(b)(2)(ix)(E)(*4*). The Bureau declines to extend this time period, as recommended by a few industry

[423] Pursuant to this provision, under certain circumstances, a financial institution is not required to update the listing of additional fee types within the timeframes provided under final § 1005.18(b)(2)(ix)(E).

commenters, as it believes a quarter of a year is sufficient time to perform these tasks, especially in conjunction with the update printing exception in final § 1005.18(b)(2)(ix)(E)(*4*).

The Bureau also added additional flexibility to the final rule by expressly permitting financial institutions to carry out the required reassessment and update (if applicable) more frequently than every 24 months. As clarified in final comment 18(b)(2)(ix)(E)(*2*)–2, a financial institution may choose to do this, for example, to sync its assessment process for additional fee types with its financial reporting schedule or other financial analysis it performs regarding the particular prepaid account program. The comment also explains that if a financial institution chooses to reassess its additional fee types disclosure more frequently than every 24 months, it is still required to use 24 months of fee revenue data to conduct the reassessment, and provides an example illustrating this concept.

With regard to the provisions regarding fee schedule changes in final § 1005.18(b)(2)(ix)(E)(*3*), as discussed above, the Bureau is using a 24-month timeframe to correspond to both the initial additional fee types calculation in final § 1005.18(b)(2)(ix)(D)(*2*) and (*3*) as well as the periodic reassessment in final § 1005.18(b)(2)(ix)(E)(*2*). In response to the industry commenter recommending against the ''reasonable'' standard under which a financial institution must project revenues for prepaid account programs in certain circumstances (in final § 1005.18(b)(2)(ix)(E)(*3*), as well as in final § 1005.18(b)(2)(ix)(D)(*2*) and (*3*) discussed above), the Bureau believes that, although financial institutions will not have actual fee revenue data for such products, they nonetheless will have a reasonable expectation as to which fee types will generate the highest revenue. Moreover, as discussed earlier, the reasonableness standard is a commonly-accepted legal standard employed across diverse areas of law and the Bureau believes it is appropriate to apply here, in lieu of prescribing a complex formula upon which to base additional fee types disclosures for situations such as those set forth above when a financial institution simply does not have 24 months of data from which to calculate additional fee types.

Final § 1005.18(b)(2)(ix)(E)(*3*) also addresses the circumstance of a fee schedule change necessary to maintain or restore the security of any account or an EFT system as described in § 1005.8(a)(2). The Bureau believes it is appropriate to include an accommodation in the final rule to address situations where, for example, a financial institution may have to cease offering a particular service for a period of time because of security concerns. The Bureau does not wish such a change due to temporary or exigent circumstances to have negative consequences for financial institutions with respect to their disclosure of additional fee types. Due to the nature of this provision in § 1005.8(a)(2), the Bureau does not expect evasion risk with this accommodation because the Bureau does not foresee any circumstances where it would be appropriate for a financial institution to rely on § 1005.18(b)(2)(ix)(E)(*3*) to increase a fee amount, add a new fee, or change an existing fee to any amount other than $0.

Similar to the proposed rule, final § 1005.18(b)(2)(ix)(E)(*4*) provides an update printing exception. The Bureau notes that, despite opposition to the additional fee types disclosure generally by industry commenters these same commenters supported the proposed update printing exception. As stated in the proposed rule, the Bureau recognizes that it could be more complicated and time-consuming for financial institutions to make updates to packages used to sell prepaid accounts at retail. Thus, in the final rule, the Bureau is permitting financial institutions to implement updates on packaging material whenever they are printing new stock during normal inventory cycles. With regard to the possibility raised by some commenters that disclosures for the same prepaid account program may have different additional fee types disclosures depending on the medium of the disclosure (*i.e.,* electronic disclosures versus disclosures printed on packaging materials for prepaid accounts sold at retail), the Bureau continues to believe that this discrepancy will not significantly impact a consumer's decision regarding which prepaid account to acquire since consumers will most likely be comparing the disclosures for two distinct products, and not reviewing disclosures side-by-side for the same prepaid account found in different acquisition channels.

While there is a chance that allowing financial institutions to continue to use packaging with significantly out-of-date additional fee types disclosures in retail locations could reduce the effectiveness of the short form disclosure, the Bureau believes that imposing a cut-off date after which sale or distribution of out-of-date retail packages would be prohibited could be complex and would be an overly burdensome requirement to impose on financial institutions on an ongoing basis.

While the Bureau is finalizing an update printing exception for the additional fee types disclosure on prepaid account packaging materials, it did not propose, nor is it finalizing, any other specific update requirements with respect to disclosures generally. The Bureau notes that financial institutions generally must ensure all other aspects of pre-acquisition disclosures, whether on packaging materials, online, or provided through other means, are accurate at the time such disclosures are provided to consumers. In this final rule, as in the proposal, the Bureau does not believe that a general disclosure update requirement is necessary for other elements of the short form or long form disclosures provided before a consumer acquires a prepaid account, as a financial institution must continue to honor the fees and terms it discloses to the consumer, at least until such time as it satisfies the change-in-terms requirements as set forth in § 1005.8(a) and final § 1005.18(f)(2). See the section-by-section analysis of § 1005.8(b) above for a more detailed discussion of the Bureau's expectations regarding changes in terms and the addition of new EFT services.

18(b)(2)(x) Statement Regarding Overdraft Credit Features

The Bureau's Proposal

The Bureau proposed to include in the short form disclosure a statement indicating whether a consumer might be offered certain types of credit features in connection with a prepaid account. Specifically, proposed § 1005.18(b)(2)(i)(B)(*9*) would have required a statement on the short form disclosure directly below the top-line fees that credit-related fees may apply, in a form substantially similar to the clause set forth in 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 have explained that a credit plan that would be a credit card account under Regulation Z § 1026.2(a)(15)(i) could be structured either as a credit plan that could be accessed through the same device that accesses the prepaid account, or through an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor offering the plan. Proposed § 1005.18(b)(2)(i)(B)(*9*) further provided 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 will be charged, in a form substantially similar to the clause set forth in proposed Model Form A–10(d). The proposed model forms showed this disclosure as ''This card may charge credit-related fees'' or ''No overdraft or credit-related fees.''

As discussed in the proposal, in the Bureau's pre-proposal consumer testing, many participants expressed a desire to avoid using any financial products that offer overdraft. Further, other research indicates that many consumers turn to prepaid cards specifically to avoid incurring any overdraft charges.[424] The Bureau therefore believed 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 believed that placing such notice on the short form disclosure would allow consumers to decide whether they want to acquire a prepaid account that may offer credit, or whether they would prefer an account that would not offer credit. Without such a notice, the Bureau believed that consumers may not have adequate information to decide which prepaid account is best for them. The Bureau recognized that there might be some risk of confusion from providing a relatively terse statement about credit because the Bureau also proposed in § 1005.18(g) and in Regulation Z § 1026.12(h) to require financial institutions to wait at least 30 days before offering prepaid account holders credit, and not all account holders may qualify for such credit features in any event. The Bureau noted, however, that additional information would be provided on the long form about credit availability and believed that the importance of alerting all consumers as to whether credit features could be offered in connection with a prepaid account warranted including a brief statement on the short from.

Proposed comment 18(b)(2)(i)(B)(*9*)–1 would have explained that the statement required by proposed § 1005.18(b)(2)(i)(B)(*9*) 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 credit plan could be offered.

[424] *See* 2014 Pew Study at 1.

Comments Received

While the Bureau received many comments regarding its proposed approach to regulating overdraft and certain other credit features on prepaid accounts generally, few commenters addressed the Bureau's proposal regarding how to disclose these features in the short form and long form disclosures.[425] With regard to the short form disclosure, two issuing banks and an industry trade association recommended eliminating the disclosure for products that could offer associated credit features, saying it would be confusing to consumers given that the proposed rules would require financial institutions to wait 30 days after registration of a prepaid account to offer credit features and to obtain separate consumer consent. Another industry trade association and a program manager recommended substituting the word ''feature'' for ''fee'' in the proposed disclosure of ''No overdraft or credit-related fees,'' suggesting this change would avoid the potentially erroneous impression that a credit feature might be offered for free.

Two consumer groups recommended including the disclosure in the short form only when overdraft or credit are offered and not when such features are not offered. They said that disclosure when such features are not offered would confuse consumers, as most prepaid account programs do not offer overdraft or credit. They also said the absence of the negative disclosure would offer a starker contrast to the affirmative disclosure required when such features are offered. These consumer groups also recommended more fulsome disclosure in the short form regarding offered overdraft and credit features, such as requiring disclosure of fees for transfers, loads, negative balances, and insufficient funds. These groups also recommended that this disclosure should be made more prominent, such as by requiring a larger-size font. One consumer group recommended that the disclosure distinguish between prepaid account programs that offer overdraft and those that offer credit features so that financial institutions that offer prepaid accounts with low cost lines of credit (with consumer consent) can be distinguished from those that offer overdraft. Finally, two consumer groups recommended that the Bureau require the word ''overdraft'' in the disclosure because, they said, consumers know this term and it is crucial information for them. These consumer groups also opposed using the term ''credit-related fees,'' as they believed it would be opaque and incomprehensible to consumers.

[425] For an overview of the Bureau's overall approach to regulating overdraft credit features for prepaid accounts, see the *Overview of the Final Rule's Amendments to Regulation Z* section below. For a discussion of disclosure of overdraft and credit features in the long form disclosure, see the section-by-section analyses of § 1005.18(b)(4)(iv) and (vii) below.

Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(*9*) and comment 18(b)(2)(i)(B)(*9*)–1, renumbered as § 1005.18(b)(2)(x) and comment 18(b)(2)(x)–1, as proposed with certain modifications as described below. As discussed below in connection with Regulation Z, the final rule makes some revisions as to the proposal's scope of coverage regarding covered overdraft and other credit features and final § 1005.18(b)(2)(x) mirrors these revisions. The final rule also revises the proposed content of the disclosure for clarity and completeness. The Bureau also made technical modifications to the rule and final comment 18(b)(2)(x)–1 for conformity and clarity.

Specifically, if a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z § 1026.61 may be offered at any point to a consumer in connection with the prepaid account, the final rule requires the financial institution to disclose a statement that overdraft/credit may be offered, the time period after which it may be offered, and that fees would apply, using the following clause or a substantially similar clause: ''You may be offered overdraft/credit after [x] days. Fees would apply.'' If no such credit feature will be offered at any point to a consumer in connection with the prepaid account, the financial institution must disclose a statement that no overdraft/credit feature is offered, using the following clause or a substantially similar clause: ''No overdraft/credit feature.'' Comment 18(b)(2)(x)–1, adopted largely as proposed, clarifies that this statement must be provided on the short form disclosures for all prepaid accounts that may offer such a feature, regardless of whether some consumers may never be solicited or qualify to enroll in such a feature.

As discussed in the proposal, the Bureau is adopting the requirement to disclose in the short form whether an overdraft credit feature as defined by the final rule may be offered in connection with a prepaid account because it believes this is key information consumers should know to better inform their prepaid account purchase and use decisions, particularly for those

consumers seeking to use prepaid accounts to avoid overdraft or credit-related charges and those seeking out prepaid accounts with such features.[426] In keeping with the overall goal of the short form disclosure to provide consumers with a snapshot of key information, the disclosure required in the final rule is designed to alert consumers to whether an overdraft credit feature may be offered to them and, if so, two other key pieces of information—that there is a waiting period, and that fees will apply.

The Bureau does not believe it is possible to give consumers the detailed information needed to make a decision about an overdraft credit feature on the short form, and that attempting to do so would substantially undermine the value of the form—that is, succinctly providing consumers with the most important information needed to make a decision about whether to acquire the prepaid account. Moreover, the Bureau is concerned that devoting scarce space to overdraft credit features would distract consumers from this decision-making process, resulting in less space to address the core functionalities of the prepaid account. In addition, given that some consumers may not satisfy creditors' underwriting requirements or other eligibility criteria, the Bureau believes that a limited disclosure strikes the best practicable balance between competing considerations.

Accordingly, the Bureau has made a strategic decision to limit information on the short form disclosure about overdraft credit features to this one statement, and to refer consumers to the long form for more detailed information about all fees and conditions, including information about any overdraft credit feature. The Bureau recognizes that the short form disclosure will not provide consumers with a detailed definition of the term ''overdraft/credit'' or the details about a particular overdraft credit feature, but believes that the disclosure strikes a reasonable balance given the goals of the form, its performance in testing, and its space constraints. In short, the Bureau believes that the form will give consumers the most critical information about any overdraft credit features with a strong incentive to seek additional details in the long form disclosure or elsewhere if they are interested. Relatedly, consistent with this overall decision, the Bureau believes that it is appropriate to exclude any finance charges related to an overdraft credit feature from the additional fee type disclosures required in the short form pursuant to final § 1005.18(b)(2)(viii) and (ix), as discussed above.

Participants in the Bureau's post-proposal consumer testing generally understood that an affirmative statement about the availability of overdraft or credit in a prototype short form disclosure indicated the feature was offered while a negative statement indicated it was not offered. All participants given a short form indicating a prepaid card did not offer overdraft or credit correctly understood that no such program would be offered or that a transaction would not go through if the consumer tried to make a purchase for more money than the amount loaded on the card. Conversely, all participants given a short form indicating a prepaid card offered overdraft or credit who noticed the statement correctly understood that a transaction might be allowed in some cases if they tried to make a purchase for more money than the amount loaded on the card.[427] Thus, post-proposal testing results confirm consumer understanding of disclosures both when an overdraft credit feature is offered and when no such feature is offered—as would have been required by the proposed rule.

Moreover, the long form disclosure will provide additional information about overdraft credit features for consumers who are interested in such programs including, as referenced by a consumer group commenter, programs under which prepaid accounts with low lines of credit are offered. As discussed in detail below, final § 1005.18(b)(4)(iv) requires that the long form disclosure contain a statement that mirrors the overdraft credit statement required in the short form by final § 1005.18(b)(2)(x). In addition, for prepaid account programs offering an overdraft credit feature as defined by the final rule, the long form disclosure must include the actual fees consumers may incur for using that feature that are imposed in connection with the prepaid account (pursuant to final § 1005.18(b)(4)(ii)),[428] as well as the disclosures described in Regulation Z § 1026.60(e)(1) (pursuant to final § 1005.18(b)(4)(vii)).

The Bureau also believes that the final rule's refinements to the language and placement of the short form statement about overdraft credit features will reduce the risk of consumer confusion about the nature and timing of any credit offers. To emphasize its importance, pursuant to final § 1005.18(b)(7)(ii)(B)(*1*), the statement about overdraft credit features must be in bold-faced type. The proposed rule would have required the statement to be located within the fee section of the short form disclosure, just below the top-line fees, to emphasize its relative importance among all the disclosures on the short form. In the final rule, the Bureau has relocated the statement to the section below the fee disclosures together with other statements required in the short form disclosure, as upon further consideration, the Bureau is concerned locating it amidst the fee disclosures could be confusing to consumers.

The Bureau's consumer testing and other considerations, such as commenters' concerns that consumers may be confused by the proposed short form's lack of information regarding availability of the feature and the Bureau's proposed 30-day waiting period, after which consumers may be solicited for or may link credit to a prepaid account, led the Bureau to require disclosure that a consumer ''*may* be offered overdraft/credit *after [x] days*'' (emphasis added). In response to the concern that the proposed disclosure could intimate that prepaid account programs offer overdraft or credit programs for free, the final rule requires explicit disclosure that ''[f]ees would apply.'' Where no overdraft credit feature will be offered, the final rule requires disclosure of ''[n]o overdraft/credit *feature*'' (emphasis added), replacing the proposed term ''fee.'' The Bureau's post-proposal consumer testing revealed, consistent with the Bureau's proposed rule, that the statements required in the final rule effectively provide the information that the Bureau intends to be imparted in that most participants understood that overdraft or credit may or may not be offered (as applicable), that obtaining the service is not guaranteed, that there is a 30-day waiting period, and that they may pay fees for the service.[429]

The disclosures required under the final rule use the term ''overdraft/credit'' instead of the proposed ''credit-related [fees]'' and ''overdraft or credit-related [fees]'' because the Bureau agrees with commenters that use of the term ''overdraft'' in both versions of the disclosure may be more meaningful to consumers. The Bureau is concerned that, while the term ''overdraft credit'' (without a slash) is more technically

[426] *See* ICF Report II at 25. (In the Bureau's post-proposal consumer testing, participants were nearly evenly split as to whether knowing a prepaid card offering overdraft or credit made them feel more positively or negatively toward the card.)

[427] *See* ICF Report II at 14.

[428] See comment 18(b)(7)(i)(B)–1 for guidance regarding disclosure of finance charges in the long form.

[429] *See* ICF Report II at 14 and 24–25.

accurate, it may not have particular meaning to consumers. The Bureau also believes that use of the same term in both the short form and long form disclosures will facilitate consumers' ability to comparison shop.

For all of these reasons, the Bureau believes that the refined and relatively short statement regarding whether overdraft credit features may be offered in connection with the prepaid account strikes the best balance for the short form disclosure. The Bureau therefore declines to add additional details about the terms of such overdraft credit features to the short form disclosure.

18(b)(2)(xi) Statement Regarding Registration and FDIC or NCUA Insurance

As described in detail below, the proposed rule would have required a statement in the short form disclosure communicating to consumers that a prepaid account must be registered in order for the funds to be protected. On the following line, the proposed rule would have required disclosure of a lack of FDIC or NCUSIF insurance. In the final rule, the Bureau has combined the registration and insurance disclosures and is requiring the financial institution to disclose whether or not the prepaid account program is eligible for FDIC or NCUA insurance.

The Bureau's Proposal Requiring a Statement Regarding Registration of the Prepaid Account

The Bureau proposed 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 have required 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 clauses set forth in proposed Model Forms A–10(a) through (d).

As discussed in part II.B above, 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 proposed to add this statement because many consumer protections set forth in the proposed rule would not take effect until a consumer registers an account. For example, under proposed § 1005.18(e)(3), a consumer would not have been entitled to error resolution rights or protection from unauthorized transactions until after registering the prepaid account. The Bureau believed 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 the rightful cardholder is.

The Bureau, however, recognized 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 specifically solicited comment on whether the short form disclosure provided to consumers pre-acquisition should always include this statement regarding registering the prepaid account.

The Bureau's Proposal Requiring a Statement Regarding FDIC or NCUA Insurance

The Bureau also proposed to address pass-through deposit (and share) insurance in proposed § 1005.18(b)(2)(i)(B)(*13*). Specifically, proposed § 1005.18(b)(2)(i)(B)(*13*) would have required that if a prepaid account product is not set up to be eligible for FDIC deposit or NCUA share insurance, a financial institution would have to include a statement on the short form disclosure that FDIC deposit insurance or NCUA share insurance, as appropriate, does not protect funds loaded into the prepaid account, in a form substantially similar to the clause set forth in proposed Model Forms A–10(c) and (d).

As discussed in part II.B 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 placed 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.[430]

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 believed 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, the Bureau proposed that 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 about two thirds 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, or explained that it only applies to funds held by a bank or credit union in a pooled account associated with the program). The Bureau found that only about 11 percent of agreements explicitly stated that the program was not insured.[431]

In its pre-proposal 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, nearly all participants said they had heard of FDIC deposit insurance, and many consumers believed the funds on their GPR cards were FDIC-insured.[432] 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

[430] 73 FR 67155, 67157 (Nov. 13, 2008).

[431] Of the remaining agreements, about 17 percent implied that the program was FDIC or NCUSIF insured by stating that the issuer is an FDIC- or NCUA-insured institution, but that did not address FDIC or NCUSIF insurance coverage for the program. A small number of agreements, 6 percent of those reviewed, did not address FDIC or NCUA 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. *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.*

[432] *See* ICF Report I at 10.

or a stolen card.[433] 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 decided not to propose any requirements related to the affirmative existence of pass-through deposit insurance. The Bureau did propose, however, that financial institutions would have to disclose a statement on the short form if a prepaid account is not set up to be eligible for FDIC (or NCUSIF) pass-through deposit (or share) insurance.

Comments Received Regarding the Statement Regarding Registration

Industry commenters, including an industry trade association, an issuing bank, a program manager, and the office of a State Attorney General generally supported the proposed statement regarding registration. The industry commenters also expressed concern, however, that the disclosure could mislead consumers because the statement implies that registration alone protects against fraud, rather than just providing a step toward FDIC insurance coverage and protections under Regulation E. The program manager recommended modifying the disclosure by combining the registration and insurance disclosures into one disclosure because, it said, registration is necessary for FDIC insurance coverage and a combined disclosure would be more accurate and less confusing to consumers. It also recommended stating that registration protects the consumer's ''rights'' rather than ''money,'' as a more accurate statement. The program manager recommended the following statement: ''Register your card to be eligible for [FDIC/NCUSIF] insurance and to protect your rights.'' The trade association and issuing bank recommended the following statement: ''Register your card to protect your money.''[434]

Several industry commenters, including a trade association, a program manager, and two issuing banks also recommended eliminating the registration disclosure for certain types of prepaid account programs, including non-reloadable prepaid products, payroll card accounts, and government benefit accounts. One of the issuing banks and the program manager said the statement was not relevant for non-reloadable products because there is no customer identification or account registration process for such programs and, thus, the statement would be confusing to consumers. The remaining commenters said the registration requirement was not relevant for payroll card accounts and/or government benefit accounts because registration occurs prior to card issuance and because such accounts would be required to provide error resolution and limited liability protections regardless of registration. The program manager suggested that the space could be better used to disclose other information, such as how to access full wages without fees for payroll card accounts.

Comments Received Regarding the Statement Regarding FDIC or NCUA Insurance

A number of industry commenters, including industry trade associations, issuing banks, and a credit union, and as well as several consumer groups commented on the proposed insurance disclosure (which, as discussed above, would have required disclosure only of the lack of insurance). Several industry trade associations and a credit union supported the Bureau's proposed disclosure requirement; one commenter noted that it is essential for consumers to know that they could lose their money if the financial institution were to fail. Most industry commenters, however, recommended that the Bureau require disclosure of both when pass-through deposit insurance is available and when it is not. One industry trade association and an issuing bank recommended requiring disclosure when a prepaid account program is not eligible for insurance coverage and permitting the issuer to decide whether to disclose when the program is eligible for insurance coverage. The credit union commenter recommended disclosure only when the program is eligible for insurance coverage.

Two consumer groups recommended more fulsome disclosure of insurance coverage. One recommended disclosure in the short form of the risks of uninsured deposits and, when the program is eligible for insurance coverage, the need to register for insurance to attach. The other consumer group recommended that the Bureau include a section in the long form disclosure which would provide fuller disclosure regarding the lack of insurance. (See a detailed discussion of this issue in the section-by-section analysis of § 1005.18(b)(4)(iii) below.) One of the consumer groups recommended requiring providers to inform consumers that registration of the prepaid account is required for deposit insurance to attach and protect funds.

Although the Bureau had not proposed to require financial institutions affirmatively to obtain deposit or share insurance, some commenters urged such a requirement. In particular, many consumer groups, individual consumers who submitted comments as part of a comment submission campaign organized by a national consumer advocacy group, and the offices of two State Attorneys General argued that disclosures are insufficient in this instance and requested that the Bureau require that prepaid account funds be held in custodial accounts that carry deposit insurance. Several commenters requested FDIC insurance for specific accounts, such as payroll card accounts and registered prepaid accounts. A few commenters argued that virtual payment accounts that offer the same features as prepaid cards should also be FDIC insured because the non-bank entities that offer such accounts might attempt to avoid the cost of insurance and the oversight of regulators by not storing funds at a depository institution.

These commenters primarily argued that prepaid accounts increasingly serve as bank alternatives and therefore should have the same benefits as checking and savings accounts, especially because consumers expect this type of protection. Several commenters argued that accepting a consumer's core income and holding it in an uninsured account would be an unfair, deceptive or abusive act or practice; requiring FDIC insurance would not be unexpected or onerous

[433] The Bureau notes, however, that despite believing that FDIC insurance could ''protect'' funds held in a prepaid account, in its pre-proposal consumer testing no participants mentioned FDIC insurance when asked to interpret the statement ''Register your card to protect your money,'' which would have been disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*12*). *See* ICF Report I at 5.

[434] The trade association and the issuing bank also expressed concern that the proposed rule would have required disclosure of the name of the financial institution, when a vendor, such as a program manager, might actually carry out registration. The Bureau notes that the proposal would have permitted the name of whatever party carried out registration to be listed here, as the proposed rule would have required a statement that communicates to a consumer that a prepaid account must register with a financial institution *or servicer provider*. The final rule does not require disclosure of this information, as discussed below.

and would eliminate unscrupulous providers that do not deposit funds with legitimate financial institutions; and not requiring FDIC insurance would cause prepaid accounts to be viewed as subpar financial products.

Conversely, one industry trade association advocated against requiring pass-through insurance for prepaid accounts, arguing that such a measure would put credit unions at a competitive disadvantage because of their field of membership restrictions.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(*12*) and (*13*), combined into renumbered § 1005.18(b)(2)(xi), with several substantial modifications as described below. First, the Bureau has combined the registration and insurance disclosures into a single line. Second, the Bureau is requiring disclosure both when a prepaid account program is eligible for FDIC or NCUA insurance coverage and when it is not. Third, the Bureau has added to the regulatory text the specific language that should be used to make this combined disclosure in five distinct circumstances. The Bureau is also adopting new comments 18(b)(2)(xi)–1 and –2 to provide additional guidance regarding this disclosure requirement. Finally, the Bureau has made technical modifications to the rule for conformity and clarity.

The Bureau continues to believe it is important that financial institutions disclose to consumers purchasing prepaid accounts both that registration and insurance coverage provide protection. Because certain protections do not attach until registration, such that unregistered prepaid accounts are akin in some ways to carrying cash, the Bureau believes it is important for consumers to be aware that they should register their accounts. As discussed below, the final rule links the act of registration with insurance coverage and other protections. The Bureau believes that, even absent a consumer's full understanding of the protections afforded by registration, linking registration to insurance coverage and other protections will help motivate consumers to register their prepaid accounts.

Similarly, the Bureau believes it is important to disclose to consumers information about insurance coverage. While the Bureau's post-proposal consumer testing confirmed that some consumers erroneously equate FDIC coverage with fraud or theft protection, a number of participants understood that the insurance protects consumers' funds in the case of bank insolvency.[435] Regardless of their understanding of what FDIC insurance actually protects against, most participants identified insurance coverage as positive and wanted to know whether the prepaid card they were considering buying in the testing scenario offered this protection. The Bureau understands that the attachment of pass-through FDIC deposit or NCUA share insurance can be a complex matter determined by many factors, including how the financial institution has structured the program and the accuracy of its recordkeeping. The Bureau believes that, even absent a full understanding of the attachment requirements and the protections afforded by insurance coverage, disclosing whether a prepaid account program provides insurance coverage will educate consumers and a combined insurance and registration disclosure will help motivate consumers to register their prepaid accounts, when applicable.

The Bureau is persuaded by commenters, the results of its post-proposal consumer testing, and information received during the interagency consultation process that the registration and insurance disclosures should be combined, and that both the existence as well as the lack of insurance eligibility should be disclosed. First, registration is a prerequisite to insurance protection; the two processes are conceptually linked and the Bureau believes that disclosing them together will help consumers appreciate this cause and effect. Also, while under the proposed rule registration would have been a prerequisite to certain Regulation E protections, the final rule expands error resolution and limited liability protections for unregistered consumers, thereby reducing the urgency to emphasize registration in its own dedicated line in the short form disclosure. *See* final § 1005.18(e). Moreover, the additional space in the short form created by combining these disclosures has allowed the Bureau to permit the addition of other information to the form while remaining in keeping with the size constraints of existing J-hook packaging. *See, e.g.,* final § 1005.18(b)(2)(xiv)(B) and (3)(ii). The Bureau believes that melding these two disclosures into a single line will provide more rational and efficient information to consumers.

Second, the Bureau believes that disclosure of both the existence or lack of insurance eligibility will be more beneficial to consumers than disclosing only when insurance is not available. Consistent with the position of many commenters, the Bureau found in its post-proposal consumer testing that, while participants understood the meaning of statements regarding coverage and non-coverage, when the prototype short form was silent (as it would be under the proposed rule if the prepaid account program was eligible for insurance coverage) most participants did not understand that to mean insurance was offered.[436] The Bureau was thus concerned that the proposed model forms' silence when a program is eligible for insurance coverage would not be effective in communicating to consumers that a prepaid account program is eligible for insurance coverage.

The final rule refers to NCUA, rather than NCUSIF, insurance for credit unions. After further consideration and based on information received during the interagency consultation process, the Bureau believes the term ''NCUA'' may be more meaningful to consumers than ''NCUSIF'' and has revised the disclosures accordingly in both final § 1005.18(b)(2)(xi) and (4)(iii).

In response to concerns raised by commenters, the Bureau has tailored the final rule to take into account the existence and timing of a financial institution's consumer identification and verification process. For some types of prepaid account programs, such as payroll card accounts and government benefit accounts, financial institutions conduct customer identification and verification before the card is distributed or activated, while others, such as certain non-reloadable cards, may have no customer identification and verification process at all. As noted above, the Bureau has added to the regulatory text of the final rule specific language that financial institutions should use to make the disclosure for clarity. The tailored language required under the final rule accounts for these distinctions.

Specifically, the final rule covers five different scenarios:

- Final § 1005.18(b)(2)(xi)(A) requires that, if a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the account is opened, the financial institution make this

[435] *See* ICF Report II at 15 and 26. In the first round of the Bureau's post-proposal consumer testing, two out of nine participants understood that FDIC insurance is meant to protect their money in case of a bank failure; in the second round, approximately half of the 11 participants understood this.

[436] *See* ICF Report II at 15 and 25–26.

disclosure using the following clause or a substantially similar clause: ''Register your card for [FDIC insurance eligibility] [NCUA insurance, if eligible] and other protections.''

- Final § 1005.18(b)(2)(xi)(B) requires that, if a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the account is opened, the financial institution make this disclosure using the following clause or a substantially similar clause: ''Not [FDIC] [NCUA] insured. Register your card for other protections.''
- Final § 1005.18(b)(2)(xi)(C) requires that, if a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs for all prepaid accounts within the prepaid program before the account is opened, the financial institution make this disclosure using the following clause or a substantially similar clause: ''Your funds are [eligible for FDIC insurance] [NCUA insured, if eligible].''
- Final § 1005.18(b)(2)(xi)(D) requires that, if a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs for all prepaid accounts within the prepaid account program before the account is opened, the financial institution make this disclosure using the following clause or a substantially similar clause: ''Your funds are not [FDIC] [NCUA] insured.''
- Finally, final § 1005.18(b)(2)(xi)(E) requires that, if a prepaid account program is set up such that there is no customer identification and verification process for any prepaid accounts within the prepaid account program, the financial institution make this disclosure using the following clause or a substantially similar clause: ''Treat this card like cash. Not [FDIC] [NCUA] insured.''

The Bureau had specifically requested comment as to whether non-banks that issue prepaid accounts could apply the proposed statement regarding FDIC or NCUA insurance to their products, or whether the Bureau should propose an alternative requirement regarding the disclosure of the availability of FDIC or NCUA insurance for non-banks that issue prepaid accounts. The Bureau did not receive any comments in response to this request. The Bureau believes that it nonetheless would be useful to provide additional guidance as to when the disclosure should refer to NCUA insurance coverage and when it should instead refer to FDIC insurance coverage. Thus, new comment 18(b)(2)(xi)–1 clarifies when to use the term ''FDIC'' and when to use ''NCUA.'' Specifically, the comment explains that if the consumer's prepaid account funds are held at a credit union, the disclosure must indicate NCUA insurance eligibility. The comment goes on to say that if the consumer's prepaid account funds are held at a financial institution other than a credit union, the disclosure must indicate FDIC insurance eligibility. As a result of requests received during the interagency consultation process, the disclosures of both FDIC and NCUA insurance pursuant to § 1005.18(b)(2)(xi) expressly reflect eligibility in the statement, to put consumers acquiring prepaid accounts on notice that insurance protections may not attach in all cases. This includes, for example, when the consumer is not a member of the issuing credit union with respect to NCUA.

New comment 18(b)(2)(xi)–2 addresses certain aspects of customer identification and verification. Specifically, the comment cross-references final § 1005.18(e)(3) and comments 18(e)–4 and -5 for additional guidance on the timing of customer identification and verification processes, and on prepaid account programs for which there is no customer identification and verification process for any prepaid accounts within the prepaid account program.

The Bureau considered adding additional information to the registration and insurance disclosure in the short form, as requested by one commenter, such as an explanation of what protections in addition to insurance eligibility registration provides or more fulsome information about the implications of insurance coverage. However, in light of overall space constraints and the multiple goals for the short form, the Bureau ultimately decided against adding any more information to the registration/insurance disclosure. The Bureau believes this disclosure balances the most important information for consumers with the brevity and clarity necessary for optimal consumer comprehension of the short form disclosure. The Bureau is, however, requiring financial institutions to provide more detailed information about insurance coverage in the long form disclosure. *See* final § 1005.18(b)(4)(iii).

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, consumers' misunderstandings about what protections pass-through deposit insurance actually affords, and the complexities inherent in ensuring pass-through insurance coverage, the Bureau is not including a requirement mandating FDIC or NCUA insurance coverage at this time.

18(b)(2)(xii) Statement Regarding CFPB Web Site

The proposed rule would have required financial institutions to disclose in proposed § 1005.18(b)(2)(i)(B)(*14*) the URL of the Web site of the Consumer Financial Protection Bureau, in a form substantially similar to the clauses set forth in proposed Model Forms A–10(a) through (d) and (f). In the proposal, the Bureau indicated that it intended 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 final rule's prepaid account disclosures, and a URL to the Bureau's Web site where they can submit a complaint about a prepaid account.

The Bureau received comments from the office of a State Attorney General, an industry trade association, and a group advocating on behalf of business interests about this portion of the proposal. The office of the State Attorney General generally supported the disclosure while the trade association and business group recommended that the Bureau eliminate the disclosure. The industry trade association suggested that eliminating the disclosure would make room in the short form for information more valuable to consumers and reduce consumer confusion. It first asserted that the disclosure would not be necessary in bank branches because Bureau contact information was included in the proposed long form, which would be provided to consumers at the same time as the short form in a bank branch. Second, it said that the Bureau's pre-proposal consumer testing suggested consumers are unlikely to access the Bureau's Web site when reviewing the short form disclosure. Third, the commenter expressed concern about consumer confusion, stating that the Bureau's pre-proposal consumer testing suggested consumers would more likely access a financial institution's Web site for additional information about a prepaid account rather than obtaining more general information from the Bureau's Web site. Finally, it argued that listing both the financial institution's Web site and the Bureau's Web site on the short form disclosure would misdirect consumers,

because in one of the rounds of the Bureau's pre-proposal consumer testing, half of the participants stated that they would go to the Bureau's Web site to get additional information about a particular prepaid card product.

The business group opposed including a link to the Bureau's Web site in both the short form and long form disclosures. It stated that the link to the Web site in the model short form disclosure was not yet an operating Web site, and therefore the commenter said it could not comment on the wisdom of directing consumers to this particular Bureau Web page. The commenter further suggested that requiring financial institutions to disclose the Bureau's Web site URL on the short form disclosure constituted Bureau interference with the purchasing process and would instill doubt in the consumer's mind about the safety of the prepaid account. It said it believed questions about prepaid accounts should be directed to the financial institution in the first instance, not to a regulatory agency.

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(*14*), renumbered as § 1005.18(b)(2)(xii), with minor modifications. The Bureau has moved the required language for this disclosure into the regulatory text, and has modified that language to specify that the disclosed Web site URL would provide consumers with general information about prepaid accounts. Finally, the Bureau has made technical modifications to the rule for conformity and clarity. Accordingly, final § 1005.18(b)(2)(xii) requires that financial institutions include in the short form a statement directing the consumer to a Web site URL of the Bureau (*cfpb.gov/prepaid*) for general information about prepaid accounts, using the following clause or a substantially similar clause: ''For general information about prepaid accounts, visit *cfpb.gov/prepaid*.''

The Bureau is not persuaded by industry commenters' objections that this disclosure is unnecessary, inappropriate, or confusing. In the Bureau's post-proposal consumer testing of the short form disclosure, most participants understood that the Web site in this disclosure was administered by a government agency, not the financial institution, and that it would contain general information about prepaid accounts.[437] The Bureau continues to believe that it is important to provide consumers with a non-commercial alternative source of information about prepaid accounts to enhance consumers' ability to learn about prepaid accounts in general in order to better inform their purchase and use decisions.

18(b)(2)(xiii) Statement Regarding Information on All Fees and Services

The Bureau's Proposal

Proposed § 1005.18(b)(2)(i)(B)(*11*) would have required disclosure of a telephone number and the unique URL of a Web site that a consumer may use to access the long form disclosure that would have been required under proposed § 1005.18(b)(2)(ii) in a form substantially similar to the clauses set forth in proposed Model Forms A–10(c) and (d). Proposed § 1005.18(b)(2)(i)(B)(*11*) would have required this disclosure only when a financial institution chose not to provide a written form of the long form disclosure that would have been 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). (Proposed Model Forms A–10(a) and (b) also included this language for government benefit accounts and payroll card accounts.) The Bureau believed that using either the telephone number or the Web site, a consumer would be able to access information about the fees listed in the long form disclosure, and any conditions on the applicability of those fees. As discussed in the proposal, the Bureau believed that if consumers do not receive the long form disclosure in writing or by email before acquisition in a retail store, it is important that they are still able to access the information. The Bureau also believed it is important that the Web site URL be unique to ensure that a consumer can directly access the same type of stand-alone long form disclosure that would otherwise 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 have provided further details about the telephone number that would have been required to be included on the short form disclosure pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*) when a financial institution does not provide the long form disclosure before a consumer acquires a prepaid account. The proposed comment would have clarified 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 have also explained that a consumer must not incur a fee to call this telephone number before acquiring a prepaid account. The telephone number disclosed pursuant to proposed § 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 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 financial institutions because they would perhaps have to maintain a separate toll-free line just for their prepaid account products. The Bureau noted that some card networks may require financial institutions to maintain toll-free lines, and therefore believed that telephone numbers disclosed in such cases would likely be toll-free.

Proposed comment 18(b)(2)(i)(B)(*11*)–2 would have provided further details about the Web site that would have been required to be included on the short form disclosure pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*) when a financial institution does not provide the long form disclosure before a consumer acquires a prepaid account. The proposed comment would have clarified 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 believed 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.

Relatedly, proposed § 1005.18(b)(4)(i)(A) would have required, among other things, that the URL disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*) must not exceed 22 characters and must be meaningfully named. The Bureau explained that by meaningfully named, it meant a Web site URL that uses real words or phrases, particularly those related to the actual prepaid account product. The Bureau believed 22 characters is the maximum length of a Web site URL that can fit legibly on a short form disclosure on

[437] *See* ICF Report II at 12 and 22.

most existing retail packaging material. The Bureau further believed these parameters would ensure that a consumer can easily enter the Web site URL listed on the short form into a mobile device when shopping in a retail store in order to access the long form disclosure. Using a meaningfully named Web site URL would also ensure that it is easy for a consumer to understand, which the Bureau believed would increase the likelihood that a consumer would use the URL to seek out more information about a prepaid account product.

The Bureau also considered whether to require financial institutions to disclose an SMS short code, which might be easier to type than a Web site URL, that consumers could text to receive the Web site URL that links directly to the long form disclosure.[438] The Bureau decided against including this method because sending a text message using an SMS short code would still require a mobile phone capable of sending text messages, could incur costs for the consumer, and would require adequate reception in the retail location. The Bureau also considered, but did not propose, requiring that a quick response (QR) code be included in the short form but decided against it because a QR code would require a substantial amount of space on the small short form disclosure and QR code adoption remains low. The Bureau did, however, request comment on including SMS and QR codes in the short form disclosure.

Comments Received

The Bureau received few but varied comments regarding the requirement in proposed § 1005.18(b)(2)(i)(B)(*11*) to disclose a telephone number and Web site URL in the short form disclosure in retail settings so that consumers could access the long form disclosure pre-acquisition. An industry trade association supported the disclosure and recommended it for all short forms, not just those in retail settings, but arguing that inclusion of this information generally would render unnecessary pre-acquisition disclosure of the written long form. A member of a trade association for State government officials generally expressed concern about consumer confusion, positing that a consumer picking up the short form may not realize there is also a long form disclosure. A program manager requested clarification that the telephone number disclosed need not be the same number for all the financial institution's prepaid account programs but rather could correspond to a particular prepaid account program. Two consumer groups and a program manager recommended allowing, but not requiring, disclosure of an SMS or QR code to provide an additional easy method to access the long form disclosure for consumers who have smart phones. An office of a State Attorney General said the Bureau should require that the long form disclosure be provided in written form in all payroll settings as employees may have limited telephone and internet access. (The proposed and final rules, in fact, do require that a long form disclosure be provided pre-acquisition for payroll card accounts.)

Several industry commenters recommended eliminating the character limit and the ''meaningfully named'' standard from the Web site URL. Specifically, an industry trade association and an issuing bank said that the limited space of the short form already requires brevity and a program manager said that use of real words and phrases does not mean web addresses will be easier to remember and that many recognizable trademarks and product names do not qualify as real words and phrases.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(*11*), renumbered as § 1005.18(b)(2)(xiii), with certain modifications. The Bureau is requiring that all short forms contain a statement directing consumers to the location of the long form disclosure to find details and conditions for all fees and services. For prepaid accounts offered at retail locations, this statement must include a telephone number and a Web site URL, as proposed. For clarity, the Bureau has added to the regulatory text the specific language for this statement. The requirements in proposed § 1005.18(b)(4)(i)(A) that the Web site URL be no more than 22 characters and must be meaningfully named has been relocated to final § 1005.18(b)(2)(xiii). Also, this provision permits financial institutions to include an SMS code as part of the disclosure. In addition, comments 18(b)(2)(i)(B)(*11*)–1 and –2, renumbered as 18(b)(2)(xiii)–1 and –2, provide further clarification regarding disclosure of the telephone number and Web site URL. The Bureau has also made technical modifications to the rule and commentary for conformity and clarity.

The final rule requires a statement in the short form disclosure directing the consumer to the location of the long form disclosure required by final § 1005.18(b)(4) to find details and conditions for all fees and services. For financial institutions offering prepaid accounts pursuant to the retail location exception in final § 1005.18(b)(1)(ii), this statement must also include a telephone number and Web site URL that a consumer may use to directly, respectively, access an oral and an electronic version of the long form disclosure required under final § 1005.18(b)(4). The Bureau proposed this exception from the requirement to provide the long form disclosure pre-acquisition at retail in recognition of the space limitations inherent in selling prepaid accounts at retail. However, the Bureau continues to believe it is important for consumers to be able to access the long form disclosure through other modes prior to purchasing a prepaid account at retail. The Bureau's post-proposal consumer testing of the short form disclosure confirmed that nearly all participants understood they could find information about additional fees not disclosed on the prototype short form by visiting the Web site or calling the telephone number on the form.[439] Thus, in final § 1005.18(b)(2)(xiii), the Bureau has retained the proposed requirement to include in the short form disclosure a telephone number and Web site URL that a consumer may use to access oral and electronic versions of the long form disclosure required by final § 1005.18(b)(4) when the financial institution is offering prepaid accounts at a retail location pursuant to final § 1005.18(b)(1)(ii).

As stated above, the Bureau is finalizing § 1005.18(b)(2)(xiii) to require disclosure in all short forms of a statement directing the consumer to the location of the long form to find details and conditions for all fees and services. Pursuant to the final rule, short form disclosures provided in locations other than retail locations are not required to disclose the additional information of a telephone number or Web site URL. Thus, the proposed disclosure remains the same in the final rule for financial institutions offering prepaid accounts pursuant to the retail location exception in final § 1005.18(b)(1)(ii). The Bureau is adopting the additional requirement that all short form disclosures contain a similar statement directing consumers to the location of the long form disclosure to alert consumers that there is a comprehensive list of fees and information available to them and where to find it in order to help them make prepaid account purchase and use decisions. The location included in the

[438] 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.

[439] *See* ICF Report II at 12 and 22.

statement required in a non-retail location might be, for example, the cardholder agreement or the Web site URL, or any other location where the consumer can locate the long form disclosure. While the long form disclosure may be readily accessible to consumers along with the short form in certain settings, the amount of information often provided to consumers prior to acquiring a prepaid account in some settings may obfuscate the existence of the more complete long form disclosure. The short form disclosure was designed to be a snapshot of key fees and information; thus it is an optimal place to alert consumers to its companion disclosure, the comprehensive long form. Finally, this change to the proposal helps standardize the short form disclosures, including those provided outside of retail locations, by requiring a parallel disclosure in all short forms directing consumers to the location of the long form disclosure.

Final § 1005.18(b)(2)(xiii) provides that this disclosure must be made using the following clause or a substantially similar clause: ''Find details and conditions for all fees and services in [location]'' or, for prepaid accounts offered at retail locations pursuant to final § 1005.18(b)(1)(ii), made using the following clause or a substantially similar clause: ''Find details and conditions for all fees and services inside the package, or call [telephone number] or visit [Web site].''

The Bureau declines to follow the recommendation of the commenter that all short forms, not just those provided in retail settings, disclose a telephone number and Web site URL through which to access the long form in lieu of requiring the written long form disclosure be provided pre-acquisition. For a full discussion of the Bureau's rationale for requiring disclosure of both a short form and a long form, see the section-by-section analysis of § 1005.18(b) above. Also, the Bureau believes that providing consumers with written versions of required disclosures that they can keep, without requiring them to have access to the internet and a printer (or a telephone), is superior to limiting consumer access to such disclosures solely through a Web site or telephone number.

The Bureau has removed the requirement that the Web site URL provided be ''unique,'' and instead is requiring that both the telephone number and Web site URL provide the consumer with direct access, respectively, to an oral and an electronic version of the long form disclosure. This modification makes explicit the reasoning set forth in the proposed rule that a consumer must not be required to go through excessive steps or have to pay to access the electronic and oral disclosures required under this section. In addition, comments 18(b)(2)(xiii)–1 and –2 provide further clarification of the direct access requirement for telephone number and Web site URL.

In the final rule, the Bureau has also relocated to § 1005.18(b)(2)(xiii) the requirements that the Web site URL not exceed 22 characters and be meaningfully named from its location in proposed § 1005.18(b)(4)(i)(A), to consolidate the requirements regarding this Web site URL in a single place. As discussed above, several industry commenters recommended eliminating the character limit and the ''meaningfully named'' standard from the Web site URL. The Bureau continues to believe that the character limit and the requirement that Web site URLs be meaningfully named is important for consumer comprehension and ease of use in a retail setting; for these reasons the Bureau is adopting these requirements in the final rule. The Bureau notes that the character limit and the meaningfully named standard are not meant to make the Web site URLs easier for consumers to remember later, but rather are meant to enable consumers to more easily and accurately enter them into a web browser on their mobile phones while in a retail location. The Bureau does not believe that a Web site URL containing a long string of meaningless letters and numbers would facilitate consumer access to the long form disclosure at a retail location. The Bureau is providing clarification in final comment 18(b)(2)(xiii)–2, as discussed below, that trademark and product names and their commonly accepted or readily understandable abbreviations are deemed to comply with the requirement of final § 1005.18(b)(2)(xiii) that the Web site URL be meaningfully named.

Finally, the Bureau is adopting the final rule with the added provision that a financial institution may, but is not required to, disclose an SMS code at the end of the statement disclosing the telephone number and Web site URL, if the SMS code can be accommodated on the same line of text as the statement required by final § 1005.18(b)(2)(xiii). The Bureau agrees with industry and consumer group commenters that consumers could benefit from allowing financial institutions to provide an additional easy method to access the long form disclosure at retail locations. The Bureau believes that an SMS code can fit within the short form disclosure without sacrificing consumer engagement and comprehension. The Bureau is not permitting a QR code to be disclosed in the short form, however, because although potentially useful, a QR code would require a substantial amount of space on the small short form disclosure and, the Bureau believes, QR code adoption continues to remain low.

Final comment 18(b)(2)(xiii)–1 clarifies that, to provide the long form disclosure by telephone, a financial institution could use a live customer service agent or an interactive voice response system. In response to the commenter referenced above, the comment goes on to clarify that a financial institution could use a telephone number specifically dedicated to providing the long form disclosure or a more general customer service telephone number for the prepaid account program. It also provides an example of a financial institution that would be deemed to provide direct access pursuant to § 1005.18(b)(2)(xiii) if a consumer navigates one or two prompts to reach the oral long form disclosure via a live customer service agent or an interactive voice response system using either a specifically dedicated telephone number or a more general customer service telephone number.

Final comment 18(b)(2)(xiii)–2 provides an example of a financial institution that requires a consumer to navigate various other Web pages before viewing the long form as one that would not be deemed to provide direct access pursuant to final § 1005.18(b)(2)(xiii). The comment also clarifies that trademark and product names and their commonly accepted or readily understandable abbreviations comply with the requirements of final § 1005.18(b)(2)(xiii) that the Web site URL be meaningfully named and provides an example.

18(b)(2)(xiv) Additional Content for Payroll Card Accounts

The Bureau's Proposal

As discussed in the section-by-section analysis of § 1005.18(b) above, the Bureau proposed to require the same short form and long form disclosures for payroll card accounts (and government benefit accounts) as for prepaid accounts generally. However, as discussed in detail below, the Bureau also proposed in § 1005.18(b)(2)(i)(A) to require that the short form disclosure for payroll card accounts include a statement at the top of the short form indicating that a consumer does not have to accept the payroll card account and instructing the consumer to ask the employer about other ways to receive

his or her wages instead of receiving them via the payroll card account, in a form substantially similar to proposed Model Form A–10(b). Proposed § 1005.15(c)(2) would have included a similar requirement for government benefit accounts, reflected in proposed Model Form A–10(a).

Pursuant to the existing compulsory use prohibition in § 1005.10(e)(2), no financial institution or other person may require a consumer to establish an account for receipt of EFTs with a particular institution as a condition of employment or receipt of a government benefit. *See also* existing comment 10(e)(2)–1 and final comment 10(e)(2)–2. The Bureau believed 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. For this reason, the Bureau proposed 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 have required that, when offering a payroll card account, a financial institution must include a statement on the short form disclosure 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 the language set forth in Model Form A–10(b). Proposed § 1005.18(b)(2)(i)(A) would have also cross-referenced proposed § 1005.15(c)(2) for requirements regarding what notice to give a consumer when offering a government benefit account.

Comments Received

Many industry commenters, including industry trade associations (including several that focus on payroll and employment issues), issuing banks, program managers, payment networks, as well as several employers, several State government agencies, and a think tank commented on this aspect of the proposal. Specifically, they expressed concern that the proposed compulsory use statement was negative and implies that the payroll or government benefit card is an inferior product, thereby discouraging its use. One commenter said the negative statement would, in effect, ''warn away'' consumers from choosing a payroll card account or government benefit card. A number of industry commenters suggested alternative disclosure language that they said would render more neutral the statement proposed by the Bureau.

Several industry commenters also asserted out that many States allow employee wages paid only via electronic means; because there is no paper check option for receiving wages, the commenters concluded that unless the employee has a bank account that can receive direct deposits, the payroll card account would be the sole way to receive wages. Others noted that most State wage and hour laws already require disclosure of information about all wage payment options before an employee decides how to receive wages. One trade association stated that the Bureau should not require financial institutions to list all available wage payment options as part of the banner notice in the final rule, as it would be difficult for employers operating in multiple states who would need to have different forms for different states, but also stated that it would support such a disclosure if it were available as an alternative to the version the Bureau proposed.

Relatedly, as discussed in more detail in the section-by-section analysis of § 1005.18(b) above, some industry commenters generally objected to the proposed short form disclosure requirement for payroll card accounts (and government benefit accounts) citing, among other things, State-required disclosure of certain fee discounts and waivers as a factor distinguishing these accounts from GPR cards. Other industry commenters recommended that the Bureau permit additional disclosures on the short form for these products, such as disclosure of State-required methods to access wages without incurring fees.

Conversely, a number of consumer group commenters supported the proposed disclosure requirements for payroll card accounts and government benefit accounts generally. Their comments underscored the importance of the notice regarding payment options at the top of the short form disclosure, with some recommending an even more conspicuous disclosure, or an expanded disclosure explaining the benefit of direct deposit to a bank account as generally cheaper and more advantageous to the consumer than receiving funds via a payroll card account (or government benefit account). Some consumer groups recommended that the Bureau extend the banner notice requirement to other types of prepaid accounts that are not subject to Regulation E's compulsory use prohibition, such as those used to disburse students' financial aid, insurance proceeds, tax refunds, and needs-tested government benefits that are excluded from coverage under Regulation E generally. Some consumer groups also urged disclosure of additional information, such as alerting the consumer when payments stop (for example when the consumer leaves the job or no longer qualifies for benefits), instructing the consumer how to un-enroll from the prepaid program, and explicitly stating that the employer cannot require acceptance of the payroll card account as a condition of employment and cannot retaliate against an employee that does not accept a payroll card account.

A nonprofit organization representing the interests of restaurant workers submitted information gathered from a survey it conducted of 200 people employed by a company that compensates nearly half of its 140,000 hourly employees via payroll card. Survey results showed that, among other problems, 63 percent of employees surveyed reported that they were not told about all of the fees associated with the payroll card before it was issued to them and 26 percent reported not being allowed to choose an alternative method of payment.

As discussed in the section-by-section analysis of § 1005.18(b)(2)(iii) above, the office of a State Attorney General recommended free and unlimited withdrawal of wages via ATMs, stating that its research in its State revealed that ATMs were the most common way for payroll card accountholders to access their wages and that accountholders regularly incurred fees for ATM transactions.

The Final Rule

For the reasons set forth in the proposal and herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(A), renumbered as § 1005.18(b)(2)(xiv)(A), with certain modifications. First, the Bureau has modified the proposed regulatory text to permit financial institutions to choose between two statements regarding wage payment options for payroll cards. Second, the Bureau has added, in new § 1005.18(b)(2)(xiv)(B), a provision to the final rule permitting financial institutions to include in the short form disclosure for payroll card accounts a statement directing consumers to a particular location outside the short form disclosure for information on ways the consumer may access payroll card account funds and balance information for free or for a reduced fee. In addition, for the reasons set forth below, the Bureau is adopting four new comments

to further explain and clarify the requirements in final § 1005.18(b)(2)(xiv)(A) and (B). Finally, the Bureau has made technical modifications to the rule for conformity and clarity.

The Bureau is adopting this provision pursuant to its authority under EFTA sections 904(a) and (c), and 913(2), and section 1032(a) of the Dodd-Frank Act, as discussed above. EFTA section 913(2) prohibits a person from requiring a consumer to establish an account for receipt of EFTs with a particular financial institution as a condition of employment or receipt of a government benefit. The Bureau believes it is important for consumers to realize they have the option of not receiving payment of wages or government benefits via a payroll card account or government benefit account, and that receiving such notice at the top of the short form disclosure will help to ensure consumers are aware of this right and can thus exercise their right. Further, the Bureau believes that requiring this disclosure 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 revision will assist consumers' understanding of the terms and conditions of their prepaid accounts—namely, that consumers have a choice regarding whether to accept the specific account. In addition, the Bureau believes that this disclosure will, consistent with section 1032(a) of the Dodd-Frank Act, ensure that the features of the prepaid accounts—again, that consumers have a choice regarding whether to accept the specific account—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.

Statement Regarding Wage Payment Options Required by § 1005.18(b)(2)(xiv)(A)

The Bureau disagrees with industry commenters' suggestion that the statement regarding wage (or benefit) payment options is negative and implies that payroll card accounts (and government benefit accounts) are inferior products, thereby discouraging consumers from using them. The Bureau examined this issue in its post-proposal consumer testing and found that participants did not construe the language negatively, confirming the Bureau's original understanding from the proposal.[440] Participants were provided a prototype short form disclosure with the statement language from the proposed rule (version one) or a disclosure with the following language (version two):[441] ''You have several options to receive your wages [benefits]: direct deposit to your bank account; direct deposit to your own prepaid card, or using this payroll [benefits] card. Tell your employer [the government agency/office] which option you want.''

All testing participants understood both versions of the statement language as saying that they did not have to accept their wages/government benefits via that prepaid card. Also, while participants understood from both versions that there were other ways to receive their payments, those that received version two were able to identify the specific options available to them. Finally, most participants expressed essentially neutral feelings about both versions of the statement and appeared to be drawing on past experiences, rather than the language in the statement, to decide whether or not they would want to use the payroll card account or the government benefit account.[442]

Even though the Bureau's post-proposal consumer testing confirmed that the proposed version of the statement regarding wage or benefit payment options would not be perceived as negative by consumers and that participants understood the statement, the Bureau has decided to include in the final rule an alternative version of the statement language which the Bureau believes would address commenters' concerns and have the added advantage of providing concrete options to consumer of how they can receive their funds.

The Bureau is thus finalizing § 1005.18(b)(2)(xiv)(A), which provides that for payroll card accounts, a financial institution must disclose a statement that the consumer does not have to accept the payroll card account and directing the consumer to ask about other ways to receive wages or salary from the employer instead of receiving them via the payroll card account using the following clause or a substantially similar clause: ''You do not have to accept this payroll card. Ask your employer about other ways to receive your wages.'' Alternatively, a financial institution may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the consumer chooses using the following clause or a substantially similar clause: ''You have several options to receive your wages: [list of options available to the consumer]; or this payroll card. Tell your employer which option you choose.'' This statement must be located above the information required by final § 1005.18(b)(2)(i) through (iv), which are located in the top line of the short form.

The statements regarding wage payment options in the final rule do not incorporate much of the additional information recommended by some consumer group commenters, such as explaining the benefit of direct deposit and providing information on how to un-enroll from the payroll card account. The Bureau declines to add such information because the design of the short form disclosure seeks a balance between the disclosure of key information necessary for consumer acquisition and use decisions and the brevity and clarity necessary for optimal consumer comprehension and engagement. While space constraints are less severe in the context of payroll card accounts and government benefit accounts than in retail locations, the Bureau is still concerned that adding this information would affect this balance and risk information overload. In response to recommendations to make the statement more conspicuous, the Bureau believes that its relative length and position at the top of the short form disclosure already provide heightened conspicuousness.

New comment 18(b)(2)(xiv)(A)–1 makes clear that financial institutions offering payroll card accounts may choose which of the two statements required by final § 1005.18(b)(2)(xiv)(A) to use in the short form disclosure. The list of options required in the second statement might include the following, as applicable: Direct deposit to the consumer's bank account, direct deposit to the consumer's own prepaid account, paper check, or cash. The comment also clarifies that a financial institution may, but is not required to, provide more specificity as to whom consumers must ask or inform of their choice of wage payment method, such as specifying the employer's Human Resources Department. The Bureau notes that, based on comments received, direct deposit to the consumer's own prepaid account is often not recognized as an option to receiving wages via the payroll card account for consumers. The Bureau believes that this is an important option

[440] *See* ICF Report at II 16–17 and 27.

[441] *Id.* A version of the unbracketed language was used on a prototype short form disclosure for a payroll card account; a version of the bracketed language was used on a prototype short form disclosure for a government benefit account; the wording and punctuation in version two was also changed slightly for government benefit accounts.

[442] *Id.*

of which consumers should be apprised, and has thus included it in comment 18(b)(2)(xiv)(A)–1 in the list of enumerated wage payment options when using the second version of the required statement.

New comment 18(b)(2)(xiv)(A)–2 cross-references § 1005.15(c)(2)(i) for statement options for government benefit accounts. In response to commenter recommendation that the Bureau extend the notice requirement to other types of prepaid accounts, the Bureau declines to require such a statement for other types of prepaid accounts as it does not believe that to be necessary at this time. However, new comment 18(b)(2)(xiv)(A)–3 clarifies that a financial institution offering a prepaid account other than a payroll card account or a government benefit account may, but is not required to, include a statement in the short form disclosure regarding payment options that is similar to either of the statements required for payroll card accounts pursuant to final § 1005.18(b)(2)(xiv)(A) or government benefit accounts pursuant to final § 1005.15(c)(2)(i). For example, a financial institution issuing a prepaid account to disburse student financial aid proceeds may disclose a statement such as the following: ''You have several options to receive your financial aid payments: direct deposit to your bank account, direct deposit to your own prepaid card, paper check, or this prepaid card. Tell your school which option you choose.'' The Bureau believes consumers would benefit from knowing their options and thus is clarifying that this disclosure may be provided by financial institutions for other types of prepaid accounts, but declines to require such a statement for other types of prepaid accounts as requested by some consumer group commenters.

Statement Regarding State-Required Information or Other Fee Discounts and Waivers Permitted by § 1005.18(b)(2)(xiv)(B)

Some industry commenters voiced concern regarding the interplay between the short form disclosure required for payroll card accounts (and government benefit accounts) and disclosure of information required by State law and other fee discounts and waivers for these products.[443] In response to these concerns, the Bureau is adopting new § 1005.18(b)(2)(xiv)(B) which states that, for payroll card accounts, a financial institution may, but is not required to, include a statement in one additional line of text directing the consumer to a particular location outside the short form disclosure for information on ways the consumer may access payroll card account funds and balance information for free or for a reduced fee. This statement must be located directly below any statements disclosed pursuant to final § 1005.18(b)(3)(i) and (ii) (regarding variable fees), or, if no such statements are disclosed, above the statement required by final § 1005.18(b)(2)(x) (regarding overdraft credit features). In addition, for the reasons set forth below, the Bureau is adopting new comment 18(b)(2)(xiv)(B)–1. The Bureau is also adopting a similar provision for government benefit accounts in final § 1005.15(c)(2)(ii).

The Bureau believes that some commenters may have misunderstood the proposed short form disclosure as prohibiting inclusion *near* the short form disclosure of State-required information regarding the payroll card account (or government benefit account), particularly State-mandated methods to access the full amount of wages for free each pay period. However, neither the proposed rule nor this final rule's segregation requirements prohibit such disclosures near, but outside, of the short form. Final § 1005.18(b)(7)(iii), as discussed in detail below, provides that the short form and long form disclosures must be segregated from other information and must contain only information that is required or permitted for those disclosures by final § 1005.18(b). Thus, while additional information may not be added to the short form, there is no prohibition in the proposed or final rule against including other information, such as the State-required disclosures or other fee discounts and waivers, on the same page as the short form. Moreover, because payroll card accounts and government benefit accounts are not subject to the same space constraints as prepaid accounts sold in retail locations, the short form disclosure for such accounts likely can accommodate additional information on the same page as the short form disclosure.

The Bureau examined the potential feasibility of the optional statement in final § 1005.18(b)(2)(xiv)(B) during its post-proposal consumer testing. Specifically, testing was conducted to ascertain whether consumers understood the relationship between specific information provided on the same page as (but outside) the short form to the information inside the short form.[444] The discounts/waivers listed below the short form were generally related to a fee that was asterisked in the prototype short form to indicate the fee can be lower.[445] To help direct participants' attention to these additional disclosures, the short form included the following statement below the asterisk statement: ''See below for free ways to access your funds and balance information.'' In addition, in one round of testing, participants were provided with both a prototype short form and a long form to see if they could locate information about specific fees that were not included within the short form. In post-proposal consumer testing, the majority of participants understood and could use this information.[446] Based on this testing, the Bureau believes that consumers will be able to understand the connection between information in the short form and other information that financial institutions may include on the same page as, but outside, the short form disclosure. The Bureau believes that permitting such a statement in the short form for payroll card accounts (and government benefit accounts) will not disrupt consumer engagement and comprehension and would help industry accommodate for any potential discrepancies between Federal and State disclosure requirements.

New comment 18(b)(2)(xiv)(B)–1 provides several examples of how a financial institution might disclose in the short form for payroll card accounts

[443] See, *e.g.,* the section-by-section analysis of § 1005.18(b)(2)(iii) above regarding ATM withdrawal fees.

[444] *See* ICF Report II at apps. B and C for the forms shown to participants during the Bureau's post-proposal consumer testing. The tested information included: First three out-of-network ATM withdrawals per month free; one free bank teller cash withdrawal per month; and balance information available for free online, via mobile app, and by calling automated customer service.

[445] *Id.* The tested information included: first three out-of-network ATM withdrawals per month free; one free bank teller cash withdrawal per month; and balance information available for free online, via mobile app, and by calling automated customer service.

[446] In the first round of post-proposal testing, four of nine participants understood how the information in the short form disclosure related to the additional disclosures appearing below the short form. *Id.* at 17. The Bureau believes more participants would have made the link to this information if the prototype payroll card account short form had not been tested last; the Bureau believes participants stopped reading the content of the asterisk disclosure because they assumed they already knew what it said from the previous versions they had reviewed. In the second round, all 11 participants were able to use the information below the short form or the information in the long form to correctly respond to queries as to whether certain fees could be lower than the fees cited within the short form. *Id.* at 28–29. In the second round of the Bureau's post-proposal consumer testing, the prototype government benefit short form was the first form shown to participants. *Id.* at 20–21.

a statement directing consumers to outside the short form to find information on conditions for a consumer to access funds and balance information for free or for a reduced fee in accordance with § 1005.18(b)(2)(xiv)(B). Specifically, the comment states that, for example, a financial institution might include the following line of text in the short form disclosure: ''See below for free ways to access your funds and balance information'' and then list below, but on the same page as, the short form disclosure several ways consumers can access their payroll card account funds and balance information for free. Alternatively, the financial institution might direct the consumer to another location for that information, such as by stating ''See the cardholder agreement for free ways to access your funds and balance information.'' The comment also notes that a similar statement is permitted for government benefit accounts pursuant to final § 1005.15(c)(2)(ii).

18(b)(3) Short Form Disclosure of Variable Fees and Third-Party Fees and Prohibition on Disclosure of Finance Charges

The Bureau's Proposal

Proposed § 1005.18(b)(2)(i)(C) would have set forth how, within the confines of the proposed short form disclosure, financial institutions could disclose fees that may vary. As noted in the proposal and above, in many instances, prepaid accounts may have certain fees that vary depending on how a consumer uses the account. The proposal gave the example of monthly periodic fees that are, for some prepaid account programs, waived when a consumer receives direct deposit or when the monthly balance exceeds a certain amount. The Bureau was concerned that in some instances, these conditional situations could become complicated and difficult to explain on a short form disclosure, particularly for multiple fees. The Bureau believed that allowing multiple, complex disclaimers on a single form would be complicated and make comprehension and comparisons more difficult.

Thus, the Bureau proposed § 1005.18(b)(2)(i)(C), which would have provided 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 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 the proposed Model Forms A–10(a) through (d). Proposed § 1005.18(b)(2)(i)(C) would have also stated that 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. Proposed § 1005.18(b)(2)(i)(C) would have further stated that a financial institution must not disclose any additional third-party fees imposed in connection with any of the fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*8*).

Proposed comment 18(b)(2)(i)(C)–1 would have provided examples of how to disclose variable fees on the short form disclosure in accordance with proposed § 1005.18(b)(2)(i)(C). The proposed comment would have also clarified that proposed § 1005.18(b)(2)(i)(C) does not permit a financial institution to 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. That information would also have been required to be disclosed in the long form pursuant to proposed § 1005.18(b)(2)(ii)(A). Proposed comment 18(b)(2)(i)(C)–2 would have explained that third parties could include service providers and other entities, regardless of whether the entity is an agent of the financial institution. The Bureau believed 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 recognized 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, proposed to require that this information be disclosed on the long form, pursuant to 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. The Bureau believed that the 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.

Comments Received

Comments regarding disclosure of variable fees. A number of industry commenters, including industry trade associations, program managers, issuing banks, a payment network, and a law firm writing on behalf of a coalition of prepaid issuers, as well as several State government agencies and a think tank, recommended that the Bureau eliminate the requirement to disclose the highest fee for a fee that varies in favor of more fulsome disclosure of the price variations for that fee. They said disclosing the highest fee, with a symbol linked to a statement explaining that the fee may be lower depending on how and where the prepaid account is used, would mislead consumers by failing to provide them with information critical to making meaningful decisions, such as more detailed information within the short form on how they can take advantage of fee waivers and discounts. Some industry commenters said it would be counterintuitive for consumers to check other areas of the packaging for such discounts and pointed to confusion over the asterisk in the Bureau's pre-proposal consumer testing as indicating the Bureau's proposed system would not work. One trade association added that required disclosure of the highest fee would restrict fee models and limit innovation.

Many of these industry commenters recommended alternatives to disclosure of the highest fee, such as permitting disclosure in the short form of the full variation of fees or requiring disclosure of the highest fee only if the issuer chooses not to disclose the fee variations. Others recommended disclosing the most common, highest and lowest, lower end, median, or a range of fees. Some recommended disclosing a graphic showing the proportion of consumers paying the highest fee or permitting a de minimis exception allowing disclosure of a lower fee if that lower price is within a close range of the highest fee. Two consumer groups specifically addressed this portion of the proposal, praising the Bureau for the short form disclosure's balance between simplicity and completeness, and saying that too much information reduces consumer understanding. One of the commenters stated that it is important for the consumer to know the highest fee, that financial institutions have alternative places to highlight how to avoid a higher fee, and that disclosing the highest fee also encourages consumers to turn to the long form disclosure to find out about fee waivers and discounts. The other consumer group

commenter stated that the required disclosure of the highest fee may encourage lowering fees but could also mislead consumers regarding the actual cost of a feature, particularly with regard to the cash reload fee, suggesting that the required disclosure of the highest fee may provide an incentive to industry to eliminate discounts, such as waiver of the periodic fee with direct deposit. This commenter suggested that the Bureau monitor and assess the impact of requiring disclosure of the highest fee.

Several industry commenters, including an issuing bank and a trade association specifically recommended permitting inclusion in the short form disclosure of the conditions under which the monthly fee could be waived, citing the importance of this fee and the prevalence of discounts and waivers applicable to this fee as crucial to consumer decisions in choosing a prepaid card. A consumer group said its research showed that 14 of 66 prepaid cards disclose that the monthly fee can be waived entirely if the consumer takes certain actions.

Comments regarding single disclosure of like fees. Some commenters recommended permitting a single disclosure in the short form in place of required two-tier fees, *i.e.,* those provisions requiring disclosure of two fee variations under a single fee or fee type, when the fee amount is the same for both fees. As noted above, two trade associations, an issuing bank, and the office of a State Attorney General made this recommendation specifically for the per purchase fee disclosure that would have been required under proposed § 1005.18(b)(2)(i)(B)(2) (final § 1005.18(b)(2)(ii) requires disclosure of a single per purchase fee) and a program manager made this recommendation for the ATM withdrawal fees under proposed § 1005.18(b)(2)(i)(B)(3).

Comments regarding disclosure of third-party fees. Several industry commenters, including issuing banks and an industry trade association commented on the Bureau's proposal to prohibit the disclosure of third-party fees in the short form. The trade association and two issuing banks generally recommended against mandating disclosure of third-party fees as impractical because, they said, the amount of the fees and the timing and frequency of changes to the fees is often outside the control of the financial institution. Specifically regarding the short form, they recommended permitting a general disclaimer regarding third-party fees or an example to show when such a fee may occur. Another issuing bank recommended that third-party fees should be permitted, but not required, to be disclosed in the short form. Comments related to disclosure of third-party fees in the short form specifically for cash reloads are addressed in more detail in the section-by-section analysis of § 1005.18(b)(2)(iv) above. In that particular circumstance, some commenters expressed concern that failing to reflect third-party fees in connection with the proposed disclosure of the cash reload fee in the short form might create consumer confusion given that it is a standard industry practice for reload network providers or third-party retailers, not the financial institutions that issue prepaid accounts, to provide and charge for the reloading of cash into prepaid accounts. In addition to confusing consumers, commenters suggested this outcome would result in a competitive disadvantage for financial institutions that offer proprietary systems, which are usually less expensive than third-party systems, and thereby dissuade financial institutions from offering this service.

Comments regarding disclosure of finance charges. Although the Bureau did not specifically solicit comment on disclosure in the short form of finance charges, several consumer group commenters addressed this issue in their comments regarding the proposed statement on overdraft credit features. As discussed above, these consumer groups recommended that the Bureau require disclosure in the short form of the actual fees charged for overdraft credit features, which one consumer group said would otherwise permit the issuer to hide the ball by calling such fees by other names. The Bureau received no comments from industry specifically about disclosure of finance charges in the short form disclosure.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(C), renumbered as § 1005.18(b)(3), with certain modifications. While the Bureau is adopting the proposed requirement to disclose the highest fee when the amount of a fee can vary in final § 1005.18(b)(3)(i), it is also adopting new § 1005.18(b)(3)(ii) to give financial institutions the option to disclose more detailed fee waiver or discount information specifically for the periodic fee required to be disclosed by final § 1005.18(b)(2)(i).[447] In addition, the Bureau is adopting new § 1005.18(b)(3)(iii) permitting, as an alternative to certain two-tier fee disclosures, disclosure of a single fee amount when the amount is the same for both fees. With regard to third-party fees, the Bureau is adopting in new § 1005.18(b)(3)(iv) a more explicit general prohibition on inclusion of third-party fees in the short form disclosure, while also providing more detail in new § 1005.18(b)(3)(v) with regard to the special provision in final § 1005.18(b)(2)(iv) to include third-party cash reload fees. Final § 1005.18(b)(3)(vi) prohibits disclosure in the short form of finance charges as described in Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61.

Finally, the Bureau has made technical modifications to the rule and related commentary for conformity and clarity and, for the reasons set forth below, the Bureau has revised proposed comments 18(b)(2)(i)(C)–1 and 2, renumbered as 18(b)(3)(i)–1 and 18(b)(3)(iv)–1, respectively, and has added new comments 18(b)(3)(ii)–1, 18(b)(3)(iii)–1, 18(b)(3)(v)–1, and 18(b)(3)(vi)–1 to provide additional clarification and guidance regarding the requirements set forth in final § 1005.18(b)(3).

Disclosure of Variable Fees Generally and for the Periodic Fee

Final § 1005.18(b)(3)(i) generally provides that if the amount of any fee that is required to be disclosed in the short form disclosure could vary, a financial institution shall disclose the highest amount it may impose for that fee, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used, using the following clause or a substantially similar clause: ''This fee can be lower depending on how and where this card is used.'' Except as provided in final § 1005.18(b)(3)(ii), a financial institution must use the same symbol and statement for all fees that could vary. The linked statement must be located above the statement required by final § 1005.18(b)(2)(x). As discussed in more detail below, final rule § 1005.18(b)(3)(ii) provides an alternative for periodic fees disclosed pursuant to § 1005.18(b)(2)(i) where a financial institution can disclose either the asterisk statement pursuant to § 1005.18(b)(3)(i) or can disclose specific information about fee waiver or reduction for the periodic fee.

[447] See final comment 18(b)(2)(ix)(C)–1 for specific guidance regarding disclosure of fee variations in additional fee types.

As discussed above in connection with the periodic fee disclosure under § 1005.18(b)(2)(i), the Bureau acknowledges the concerns expressed by commenters regarding the need to provide more information about how such fees can vary. However, for the reasons discussed below, the Bureau believes that providing the same level of tailoring and detail with regard to all other fees on the short form would substantially increase the complexity of the form and decrease its usefulness to consumers as an introductory overview of account pricing. Accordingly, the Bureau believes that the best balance is to allow more flexibility with regard to periodic fees while maintaining the proposal's approach to variations in other fees. The Bureau continues to believe that information on fee variations for all other fees could not be disclosed in a manner that is both engaging and comprehensible to consumers. The design of the short form disclosure seeks a balance between the disclosure of key information necessary for consumer purchase and use decisions and the brevity and clarity necessary for optimal consumer comprehension and engagement. Incorporating into the short form disclosure multiple complex disclaimers, often featuring a variety of conditions under which consumers may receive fee waivers or discounts or obtain fee waivers or discounts for a certain time period, would disrupt this balance.

Further, many of the alternatives recommended by commenters, such as disclosing a range of fees or using a graphic to show the proportion of consumers paying the highest fees, posed a degree of complexity the Bureau also believes would disrupt this balance. In addition, as opposed to alternatives recommended by commenters such as disclosing the median, lowest, or most common fee, the Bureau believes, as stated in the proposal, it is paramount for consumers to know the maximum they could pay for a particular fee. In this way, consumers will not be surprised by being charged fees higher than they expected and, as pointed out by a consumer group commenter, the linked statement can incent consumers to turn to other sources to learn about available discounts and waivers. As the Bureau explained in the proposal, financial institutions have the alternative of explaining these fee variations elsewhere, such as on other parts of the packaging or on their Web sites. In addition, financial institutions must disclose these details in the long form disclosure pursuant to final § 1005.18(b)(4)(ii), discussed below. The Bureau believes that once the standardized short form disclosure is used by all prepaid account programs, it will not be counterintuitive, as asserted by some industry commenters, to look outside of its contours for additional information like fee waivers and discounts.

In response to the consumer group commenter raising concerns and recommending that the Bureau monitor and assess the impact of requiring disclosure of the highest fee, the Bureau notes that the commenters' concerns regarding disclosure of periodic fees and fees for cash reloads are specifically addressed in the final rule, respectively, by § 1005.18(b)(3)(ii) and (v). Also, the Bureau intends to continue to monitor the issues addressed in this rule, including disclosure of the highest fee.

In response to the industry commenter citing to the Bureau's pre-proposal consumer testing as indicating that the proposed system for disclosing fee variation with an asterisk linked to a generic statement that fees could be lower would confuse consumers, the cited testing actually revealed the opposite: Participants were confused by multiple asterisks linked to the details of fee variations for specific fees. The Bureau's post-proposal consumer testing supports adoption of the proposed system in that, although some misconceptions persisted, most participants understood the significance of the presence or absence of the asterisk when linked to fees other than the monthly fee.[448]

As discussed above, some commenters recommended that the Bureau permit fuller fee disclosure in the short form for waivers and discounts of the monthly fee. The Bureau recognizes that the monthly fee is a key fee and is one of the most commonly waived or discounted prepaid account fees. The Bureau understands such waivers and discounts are based on the consumer meeting one or a combination of the following conditions: Having direct deposit into the prepaid account, making a set number of transactions per month, or loading a minimum amount of money per month into the prepaid account.

The Bureau followed up on this issue in its post-proposal consumer testing. In addition to an asterisk linking the highest fees to a statement indicating the fee can be lower depending on how and where the card is used, the Bureau also tested adding a dagger symbol (†) after the highest fee disclosed for the periodic fee, linked to an additional line of text located above the asterisked statement, describing variations in the monthly fee due to waivers and discounts when certain conditions are met.[449] The Bureau's post-proposal consumer testing examined participant comprehension of various versions of the language and in various scenarios.[450] Most participants who saw the form with the dagger language correctly linked the dagger to the associated text and understood that the circumstances under which the monthly fee could be waived and most participants who saw the form with only the generic asterisk language linked to the monthly fee correctly linked the asterisk to the associated text and understood the monthly fee could be lower in some situations.[451] Thus, regardless of the version shown, all participants understood that the monthly fee could be waived in some situations, and all were able to correctly identify those situations.

The primacy of the periodic fee, prevalence of fee variations associated with the periodic fee, successful consumer testing of disclosure of fee variation for the monthly fee, and both industry and consumer group comments suggesting particular consideration regarding disclosure of the periodic fee have led the Bureau to adopt new § 1005.18(b)(3)(ii), which permits financial institutions an alternative disclosure for a periodic fee that may vary. Specifically, if the amount of the periodic fee disclosed in the short form disclosure pursuant to final § 1005.18(b)(2)(i) could vary, as an alternative to the disclosure required by final § 1005.18(b)(3)(i), the financial institution may disclose the highest amount it may impose for the periodic fee, followed by a symbol, such as a dagger, that is different from the symbol the financial institution uses pursuant to final § 1005.18(b)(3)(i), to indicate that a waiver of the fee or a lower fee might apply, linked to a statement in one additional line of text disclosing the waiver or reduced fee amount and explaining the circumstances under

[448] *See* ICF Report II at 10–11 and 21.

[449] See ICF Report II at apps. B and C for copies of the prototype short form disclosures tested.

[450] Participants variously examined a single prototype short form in isolation, compared two prototype short forms with differing versions of the dagger language, and compared one prototype short form that included dagger language to a short form that did not include dagger language (but which did link the monthly fee to the more generic asterisk statement). *See* ICF Report II at 11 and 21–22.

[451] *Id.* In addition to successfully following the dagger symbol to the appropriate text, some participants also linked the monthly fee to the text associated with the more generic asterisk language which, while applicable, was not intended.

which the fee waiver or reduction may occur. The linked statement must be located directly above or in place of the linked statement required by final § 1005.18(b)(3)(i), as applicable.

The Bureau believes that this optional addition to the short form disclosure will help consumers better understand nuances regarding this important fee without serious compromise to the overall integrity of the short form design, especially in light of the reduction of information disclosed in the short form pursuant to the final rule. *See, e.g.,* removal of two-tiered fees from § 1005.18(b)(2)(ii), reduction of three incidence-based fees to two additional fee types disclosed pursuant to § 1005.18(b)(2)(ix), and permitted single disclosure for like fees pursuant to § 1005.18(b)(3)(iii).

Final comment 18(b)(3)(i)–1 provides an example illustrating the general disclosure requirements of variable fees pursuant to final § 1005.18(b)(3)(i). The comment also explains that, except as described in final § 1005.18(b)(3)(ii), final § 1005.18(b)(3)(i) does not permit a financial institution to describe in the short form disclosure the specific conditions under which a fee may be reduced or waived, but the financial institution could use, for example, any other part of the prepaid account's packaging or other printed materials to disclose that information. The comment also explains that the conditions under which a fee may be lower are required to be disclosed in the long form disclosure pursuant to § 1005.18(b)(4)(ii).

New comment 18(b)(3)(ii)–1 explains that, if the amount of the periodic fee disclosed in the short form pursuant to final § 1005.18(b)(2)(i) could vary, a financial institution has two alternatives for disclosing the variation, as set forth in final § 1005.18(b)(3)(i) and (ii), and provides an illustrative example of both alternatives.

Single Disclosure of Like Fees

In new § 1005.18(b)(3)(iii), the final rule provides that, as an alternative to the two-tier fee disclosures required by final § 1005.18(b)(2)(iii), (v), and (vi) and any two-tier fee required by § 1005.18(b)(2)(ix), a financial institution may disclose a single fee amount when the amount is the same for both fees. New comment 18(b)(3)(iii)–1 provides examples illustrating how to provide a single disclosure for like fees on both the short form disclosure and the multiple service plan short form disclosure. The Bureau believes that permitting disclosure of a single fee amount for a two-tier fee disclosure where the same fee is charged for both variations creates efficiency by simplifying and shortening the short form disclosure without sacrificing consumer comprehension. The Bureau's post-proposal consumer testing confirmed that, for example, participants shown a short form with a single ATM withdrawal fee seemed to understand that the company providing the prepaid account would not charge different fees depending on what network the cardholder used.[452]

Disclosure of Third-Party Fees

For the reasons set forth in herein, the Bureau is adopting the proposed general prohibition on inclusion of third-party fees in the short form explicitly in its own provision of the final rule in § 1005.18(b)(3)(iv). Specifically, final § 1005.18(b)(3)(iv) states that, except as provided in final § 1005.18(b)(3)(v) with regard to cash reload fees, a financial institution may not include any third-party fees in a disclosure made pursuant to final § 1005.18(b)(2). New comment 18(b)(3)(iv)–1 explains that fees imposed by another party, such as a program manager, for services performed on behalf of the financial institution are not third-party fees and therefore must be disclosed pursuant to final § 1005.18(b)(3)(iv). For example, if a program manager performs customer service functions for a financial institution's prepaid account program, and charges a fee for live agent customer service, that fee must be disclosed pursuant to final § 1005.18(b)(3)(iv).

As discussed above, the Bureau received several comments in support of the Bureau's proposed exclusion of third-party fees from the short form disclosure. In response to the comments recommending that additional information or disclaimers be provided in the short form with regard to third-party fees, the Bureau believes that the abridged nature of the short form disclosure cannot accommodate disclosing all variable and third-party fees and that the comprehensive design of the long form disclosure is better suited to inform consumers about the details of fee variations and third-party fees. See the section-by-section analysis of § 1005.18(b)(4)(ii) below.

For the reasons set forth in the section-by-section analysis of § 1005.18(b)(2)(iv) above, the Bureau is requiring disclosure in the short form of third-party fees for cash reloads. This requirement is principally set forth in final § 1005.18(b)(2)(iv), and is supplemented by new § 1005.18(b)(3)(v). Final § 1005.18(b)(3)(v) provides that any third-party fee included in the cash reload fee disclosed in the short form pursuant to final § 1005.18(b)(2)(iv) must be the highest fee known by the financial institution at the time it prints, or otherwise prepares, the short form disclosure required by final § 1005.18(b)(2). A financial institution is not required to revise its short form disclosure to reflect a cash reload fee change by a third party until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the short form disclosure. Thus, whether for a prepaid account program with packaging material or for one with only online or oral disclosures, the financial institution must update the short form to disclose a third-party cash reload fee change when it otherwise updates its short form disclosure. New comment 18(b)(3)(v)–1 provides several examples illustrating when a financial institution must update its short form disclosure to reflect a change in a third-party cash reload fee.

As explained in the section-by-section analysis of § 1005.18(b)(2)(iv) above, the Bureau believes it is important to disclose cash reload fees for proprietary and non-proprietary cash reload systems alike. However, the Bureau does not believe it would be appropriate to require financial institutions to reprint or otherwise reissue their short form disclosures whenever a third party changes its fees for cash reloads, as the financial institution may not always have control over when a third party changes its fees. Rather, the Bureau believes it is appropriate to require financial institutions to update the disclosure of these third-party fees when the financial institution manufactures, prints, or otherwise produces new packaging materials or until such time that the financial institution otherwise updates the short form disclosure.

Prohibition on Disclosure of Finance Charges

In new § 1005.18(b)(3)(vi), the final rule provides that a financial institution may not include in a disclosure made pursuant to § 1005.18(b)(2)(i) through (ix) any finance charges as described in Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61. New comment 18(b)(3)(vi)–1 explains that if a financial institution imposes a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit

[452] *See* ICF Report II at 13–14.

card than the amount of a comparable fee or charge it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature, it must disclose on the short form for purposes of § 1005.18(b)(2)(i) through (vii) and (ix) the amount of the comparable fee rather than the higher fee. This comment also cross-references final § 1005.18(g)(2) and related commentary.

As discussed in more detail above, the Bureau has made a strategic decision to focus the bulk of the short form disclosure on usage of the prepaid account itself (*i.e.,* the asset feature of the prepaid account). The possibility that consumers may be offered an overdraft credit feature for use in connection with the prepaid account is addressed in the short form pursuant to final § 1005.18(b)(2)(x), which requires the following statement if such a feature may be offered: ''You may be offered overdraft/credit after [x] days. Fees would apply.'' The Bureau believes this statement, informing consumers whether an overdraft credit feature is offered for the particular prepaid account and, if so, the conditionality of the feature, the duration of the mandatory waiting period, and that fees would apply, is sufficient information for consumers for the purposes of the short form. The Bureau believes inclusion of finance charges in the short form fee disclosures would confuse consumers, obfuscating information about the fees that the Bureau believes are most important to consumers when shopping for a prepaid account.

Thus, the Bureau believes that it is appropriate to exclude any finance charges related to an overdraft credit feature that may be offered at a later date to some prepaid consumers from general disclosure on the short form, including in the disclosures regarding additional fee types under both final § 1005.18(b)(2)(viii) and (ix). If consumers are interested in such a feature, they can look to the Regulation Z disclosures in the long form pursuant to final § 1005.18(b)(4)(vii) (as well as the main fee disclosure pursuant to final § 1005.18(b)(4)(ii) for finance charges imposed on the asset features of the prepaid account), discussed below, for more details.

18(b)(4) Long Form Disclosure Content

In addition to the short form, the proposed rule would have required financial institutions to provide a long form disclosure providing all fees and certain other specified information prior to the consumer's acquisition of a prepaid account. Proposed § 1005.18(b)(2)(ii) would have provided that, in accordance with proposed § 1005.18(b)(1), a financial institution shall provide the disclosures listed in proposed § 1005.18(b)(2)(ii)(A) through (E). In contrast to the short form, where the Bureau proposed very specific formatting requirements and model forms that would provide a safe harbor for compliance, the Bureau did not specify as detailed formatting requirements with regard to the long form in the proposal. It included proposed Sample Form A–10(e) as one possible way to organize the detailed fee information, but noted that long forms might vary more widely depending on the number of fees and conditions and therefore solicited comment on whether to provide a model form.

The Bureau did not receive any comments specifically regarding whether to provide a long form as a sample form or a model form. More general comments received regarding the Bureau's proposal to require financial institutions to provide long form disclosures pre-acquisition, and the Bureau's reasons for finalizing that requirement overall, are discussed in the section-by-section analysis of § 1005.18(b) above.

The Bureau is adopting proposed § 1005.18(b)(2)(ii), renumbered as § 1005.18(b)(4), with minor modifications for clarity. The final rule requires that, in accordance with final § 1005.18(b)(1), a financial institution shall provide a disclosure setting forth the fees and information listed in final § 1005.18(b)(4)(i) through (vii) for a prepaid account, as applicable. Specific revisions and additions to the enumerated list of fees and information required in the long form disclosure are discussed in the section-by-section analyses of § 1005.18(b)(4)(i) through (vii) below.

The Bureau is finalizing Sample Form A–10(f) rather than providing a specific model long form (which would have provided safe harbor). In light of the variation in long forms that may occur where financial institutions have different fee structures and conditions, the Bureau has also revised the text of the final rule from the proposed version to remove language that would have required the long form to be in substantially similar format to the sample form. The Bureau believes this change will further underscore the fact that financial institutions are afforded discretion in formatting the long form in a way that will best convey the amount and nature of the information that is required to be provided under the rule. Thus, Sample Form A–10(f) is provided as an example that financial institutions may, but are not required to, incorporate or emulate in their own long form disclosures.

18(b)(4)(i) Title for Long Form Disclosure

Upon further consideration, the Bureau is adopting the final rule with an additional requirement in new § 1005.18(b)(4)(i) to include in the first line of the long form a heading stating the name of the prepaid account program and that the long form disclosure contains a list of all fees for that particular prepaid account program. *See also* final § 1005.18(b)(7)(i)(B). The Bureau understands that financial institutions typically include such a heading on fee disclosures contained in prepaid account agreements now. The Bureau believes that providing a title or heading to the long form, such as the one shown as an example in Sample Form A–10(f) (''List of all fees for XYZ Prepaid Card''), will help orient consumers to the long form disclosure as a comprehensive repository for fees and other key information about the particular prepaid account, particularly in contrast to the short form which provides an abridged list of fees and information.

18(b)(4)(ii) Fees

The Bureau's Proposal

Proposed § 1005.18(b)(2)(ii)(A) would have required the financial institution to disclose in the long form 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 had to disclose the amount of the fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. This would include, to the extent known, any third-party fee amounts that may apply. Proposed § 1005.18(b)(2)(ii)(A) would also have required that if such third-party fees may apply but the amount of those fees are not known, a financial institution would have had to instead include a statement indicating that third-party fees may apply without specifying the fee amount. Under the proposal, a fee imposed by a third party that acts as an agent of the financial institution for purposes of the prepaid account always would have had to be disclosed.

Proposed § 1005.18(b)(2)(ii)(A) would have also stated that a financial institution may not utilize any symbols, such as asterisks, to explain the conditions under which any fee may be imposed. The Bureau believed it is important that consumers be able to 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.

The Bureau also proposed to add commentary to explain the format of the long form disclosure. Specifically, proposed comment 18(b)(2)(ii)(A)–1 would have explained 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 can qualify for a lower fee. The proposed comment would have further explained that 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.

Proposed comment 18(b)(2)(ii)(A)–2 would have explained 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 have clarified 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. 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 have clarified that 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 alternative 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. The proposed comment also would have provided 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 should be included in the explanatory column in the long form.

Proposed comment 18(b)(2)(ii)(A)–3 would have provided guidance on the disclosure of third-party fees in the long form disclosure. Specifically, the proposed comment would have explained that, 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. Regarding the requirement in proposed § 1005.18(b)(2)(ii)(A), 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 have provided an example that any fees that the provider of a cash reload service who has a relationship with the financial institution may impose would have had to be disclosed in the long form.

Comments Received

In the context of recommending against requiring the long form disclosure altogether, a number of industry commenters—including an industry trade association, program managers, and issuing banks—asserted that the amount and complexity of the information proposed to be included in the long form disclosure would overwhelm consumers. See the section-by-section analysis § 1005.18(b) above for discussion of such comments and the Bureau's reasoning for finalizing the overall requirement to disclose the long form.

With regard to recommendations for the specific content of the long form disclosure, two issuing banks requested that the Bureau limit the proposed requirement to disclose on the long form all fees that may be imposed in connection with a prepaid account by eliminating disclosure of optional, incidental services. The commenters said such features generally are not available at the time of purchase and are disclosed in a prepaid account program's terms and conditions at the time the consumer elects such services. The commenter asserted that mandating disclosure of fees connected with such services would add complexity to the long form disclosure and discourage financial institutions from creating new features and enhanced functionality due to the burden of having to update the disclosure and distribute new packaging.

Two consumer group commenters and individual consumers who submitted comments as part of a comment submission campaign organized by a national consumer advocacy group generally supported the long form disclosures' proposed scope and urged the Bureau to add additional content requirements, such as disclosure of when funds become available after consumer deposits via ATM, teller, and remote deposit capture; free ways to get cash such as cash back at point of sale when making a purchase; and the number of surcharge-free ATM withdrawals available to the consumer. One consumer group commenter suggested that the Bureau's proposed sample long form disclosure was ambiguous in certain places regarding fees disclosure, particularly with respect to payroll card account fees.

An industry trade association recommended that free services and features be disclosed as ''$0'' in the long form instead of the two options in proposed comment 18(b)(2)(ii)(A)–2 of ''$0'' or ''free.''

Several industry commenters, including trade associations, issuing banks, program managers, and a payment network recommended eliminating the requirement to disclose third-party fees in the long form disclosure. They said it is not practical to disclose third-party fees because the amount, timing, and frequency of such fees are outside of the control of the financial institution and because any changes in such fees would require updates to the long form disclosure and change-in-fee notices. Some industry commenters urged the Bureau to require instead a general disclosure that third-party fees may apply or a more specific disclosure that third-party fees apply with information on how to obtain the specific fee information. A consumer group supported the disclosure of third-party fees in the long form as a method of creating a fair comparison among financial institutions that use third parties to load cash into prepaid accounts and those with proprietary cash reload systems.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(ii)(A), renumbered as § 1005.18(b)(4)(ii), with certain modifications. Most significantly, as explained below, the final rule contains several additional accommodations regarding disclosure of third-party fees in the long form. The Bureau is also adopting proposed comments 18(b)(2)(ii)(A)–1 through –4, renumbered as 18(b)(4)(ii)–1 through –4, with certain revisions as discussed below. Finally, the Bureau has made

technical modifications to the rule and commentary for conformity and clarity.

The Bureau is adopting this provision pursuant to its authority under EFTA sections 904(a) and (c), and 905(a), and section 1032(a) of the Dodd-Frank Act. The Bureau believes that pre-acquisition disclosures of all fees for prepaid accounts will, consistent with EFTA section 902 and section 1032(a) of the Dodd-Frank Act, assist consumers' understanding of the terms and conditions of their prepaid accounts, and 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 the account. The Bureau also believes that the long form disclosure will, in many ways, be similar to what many financial institutions currently disclose regarding prepaid accounts' fee structures in their prepaid account agreements, although pursuant to final § 1005.18(b) the long form disclosure will be provided to consumers as a stand-alone document before they acquire a prepaid account (unless the exception in final § 1005.18(b)(1)(ii) or (iii) applies).[453]

Disclosure of all fees and conditions and disclosure of features without a charge. Final § 1005.18(b)(4)(ii) requires disclosure in the long form of all fees that may be imposed in connection with a prepaid account, including fees that may be imposed by a third party, if known by the financial institution. The Bureau is finalizing as proposed the requirement that the financial institution disclose the amount of each fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. The final rule also requires that a financial institution may not use any symbols, such as an asterisk, to explain conditions under which any fee may be imposed. The final rule further states that a financial institution may, but is not required to, include in the long form disclosure any service or feature it provides or offers at no charge to the consumer.

As discussed above, some industry commenters urged the Bureau not to require disclosure of *all* fees on the long form. The Bureau believes that this requirement is necessary to help consumers understand, both prior to and after purchase, the terms and conditions of their prepaid accounts and ensure that account features are fully, accurately, and effectively disclosed in a manner that permits consumer understanding of the costs, benefits, and risks associated with the prepaid account. Furthermore, because the short form discloses a limited number of fees and few conditions, this requirement is necessary so that the long form disclosure can provide the full amount of information unabridged.

As discussed in the section-by-section analysis of § 1005.18(b) above, the Bureau believes there should be a comprehensive disclosure to which a consumer can turn prior to purchasing a prepaid account for straightforward information on all fees and the circumstances under which they may be imposed. The Bureau is not requiring disclosure in the long form of additional information related to fees as requested by some commenters because the Bureau believes disclosing fee amounts and the conditions under which they may be imposed provides consumers with the most important information they need to have access to pre-acquisition. The Bureau has observed that many financial institutions include details in their account agreements' fee schedules about free services, and the Bureau encourages financial institutions to continue to do so. To provide support to the proposed commentary regarding how to disclose free services and features, the Bureau has added to the regulatory text a sentence stating that a financial institution may, but is not required to, include in the long form disclosure any service or feature it provides or offers at no charge to the consumer.

While the Bureau is generally permitting formatting flexibility on the long form disclosure, the Bureau also is adopting the prohibition in the proposed rule against using any symbol, such as an asterisk, to explain the conditions in the long form disclosure under which any fee may be imposed. The Bureau continues to believe that it is important that consumers can easily follow the information in the long form disclosure and, absent the space constraints of the short form disclosure, the financial institution is able to explain any information about fees directly instead of relying on consumers to notice symbols and then associate them with explanatory text.

Regarding the consumer group's comment that the Bureau's proposed sample long form disclosure was ambiguous in certain places regarding fees disclosure, particularly with respect to payroll card account fees, the Bureau notes that the sample long form is meant to provide an example to aid financial institutions in complying with the requirements of final § 1005.18(b)(4). Financial institutions, including those offering payroll card accounts, should ensure that their long form disclosures accurately reflect the fees and features of their prepaid accounts.

Final comment 18(b)(4)(ii)–1 explains that the requirement in final § 1005.18(b)(4)(ii) that a financial institution disclose in the long form all fees that may be imposed in connection with a prepaid account and is not limited to just fees for EFTs or the right to make transfers. It further explains that the requirement to disclose all fees in the long form includes any finance charges imposed on the prepaid account as described in Regulation Z § 1026.4(b)(11)(ii) in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 but does not include finance charges imposed on the covered separate credit feature as described in § 1026.4(b)(11)(i). The comment cross-references comment 18(b)(7)(i)(B)–2 for guidance on disclosure of finance charges as part of the § 1005.18(b)(4)(ii) fee disclosure in the long form. The comment also clarifies that a financial institution may also be required to include finance charges in the Regulation Z disclosures required pursuant to final § 1005.18(b)(4)(vii).

Final comment 18(b)(4)(ii)–2 elaborates on the disclosure of conditions in the long form. The comment provides several examples illustrating how a financial institution would disclose the amount of each fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. The comment also clarifies that a financial institution may, but is not required to, include on the long form disclosure additional information or limitations related to the service or feature for which a fee is charged, such as, for cash reloads, any limit on the amount of cash a consumer may load into the prepaid account in a single transaction or during a particular time period. Finally, the comment clarifies that the general requirement in final § 1005.18(b)(4)(ii) does not apply to individual fee waivers or reductions granted to a particular consumer or group of consumers on a discretionary or case-by-case basis.

Final comment 18(b)(4)(ii)–3 addresses disclosure of a service or feature without a charge. It reiterates the provision in the rule that a financial institution may, but is not required to, list in the long form disclosure any service or feature it provides or offers at no charge to the consumer. For example, a financial institution may list ''online bill pay'' in its long form disclosure and indicate a fee amount of ''$0'' when the financial institution does not charge

[453] *See* also final § 1005.18(f)(1) regarding requirements for initial disclosures.

consumers a fee for that feature. The Bureau agrees that such services should be disclosed as $0, rather than ''free,'' as requested by one industry commenter, because having a single standardized approach is shorter, simpler, and clearer for consumers to use to compare fees across prepaid accounts.

Comment 18(b)(4)(ii)–3 further explains, however, that where a fee is waived or reduced under certain circumstances or where a service or feature is available for an introductory period without a fee, the financial institution may not list the fee amount as ''$0'' or ''free.'' Rather, the financial institution must list the highest fee, accompanied by an explanation of the waived or reduced fee amount and any conditions for the waiver or discount. The comment also provides several examples.

As discussed in more detail in the section-by-section analysis of § 1005.18(b) above, the Bureau does not believe that financial institutions change the fee schedules for prepaid accounts often, particularly for those sold at retail locations, and changes may require pulling and replacing or providing appropriate change-in-terms notices.

If a financial institution is making available a new optional service for all prepaid accounts in a particular prepaid account program, a financial institution may provide new customers disclosures in accordance with § 1005.7(c) post-acquisition, without needing to pull and replace card packaging that does not reflect that new optional feature in any disclosure contained inside the package in accordance with §§ 1005.7 and 1005.18(b)(1)(ii)(C), (b)(4)(ii), and (f)(1). The Bureau intends to monitor financial institutions' practices in this area, however, and may consider additional requirements in a future rulemaking if necessary.

Disclosure of third-party fees. With regard to disclosure of third-party fees in the long form, the Bureau is finalizing the general proposed requirement that financial institutions disclose in the long form any third-party fee amounts known to the financial institution that may apply, but making changes regarding the wording and updating of the disclosure to address commenter concerns.

Specifically, the final rule provides that for any such third-party fee disclosed, the financial institution may, but is not required to, include a statement that the fee is accurate as of or through a specific date, a statement that the third-party fee is subject to change, or both statements. As in the proposal, if a third-party fee may apply but the amount of that fee is not known by the financial institution, the final rule requires that the long form disclosure include a statement indicating that the third-party fee may apply without specifying the fee amount.

The Bureau moved language clarifying disclosure of fees by a party acting on behalf of the financial institution from the proposed regulatory text to the commentary in the final rule. Specifically, comment 18(b)(4)(ii)–4 clarifies that fees imposed by another party, such as a program manager, for services performed on behalf of the financial institution are not third-party fees and therefore must be disclosed on the long form pursuant to final § 1005.18(b)(4)(ii).

The final rule also provides that a financial institution is not required to revise the long form disclosure required by § 1005.18(b)(4) to reflect a fee change by a third party until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure. Thus, whether for a prepaid account program with packaging material or for one with only online or oral disclosures, the financial institution must update the long form to disclose a third-party fee change when it otherwise updates its long form disclosure. Final comment 18(b)(4)(ii)–4 provides an example illustrating a disclosure on the long form of a third-party fee when that fee is known to a financial institution and an example of when it is not.

As discussed in the section-by-section analysis of § 1005.18(b)(3) above, the comprehensive design of the long form disclosure is better suited to inform consumers about the details of fee variations and third-party fees than the short form disclosure for which, due to its abridged nature, the final rule disallows disclosure of most third-party fees. Indeed, the Bureau believes that the comprehensiveness of the long form disclosure would be compromised by the exclusion of third-party fees, which would result in consumers not being made aware of all fees they could incur in connection with the prepaid account. The Bureau believes the final rule strikes an appropriate balance by requiring disclosure in the long form of third-party fees but providing, among other things, a safe harbor regarding reprinting or otherwise updating the long form disclosure when a third-party fee changes and a general statement for situations in which a financial institution does not know the amount of the third-party fee.

Disclosing the date as of or through which a third-party fee is accurate, the fact that the third-party fee is subject to change, or both provides flexibility to alert consumers to the limitations of the financial institution's knowledge about third-party fees. The Bureau also believes that it reduces the need to require instantaneous updates as third-party fees shift. Regarding the safe harbor for reprinting due to third-party fee changes, the Bureau believes it is appropriate to require updates of these third-party fees when the financial institution prints new packaging materials or, if there are no packaging materials, when the financial institution otherwise updates the long form disclosure.

18(b)(4)(iii) Statement Regarding Registration and FDIC or NCUA Insurance

Proposed § 1005.18(b)(2)(ii)(D) would have required that the long form also include the disclosure required in the short form under proposed § 1005.18(b)(2)(i)(B)(*13*) regarding FDIC (or NCUSIF) pass-through deposit (or share) insurance, when appropriate.

The Bureau received one comment regarding the disclosure of FDIC or NCUSIF insurance in the long form. A consumer group recommended that, in addition to requiring disclosure of the statement regarding insurance eligibility required in the short form (*see* final § 1005.18(b)(2)(xi)), the Bureau require disclosure of additional information about the benefit of the insurance or the consequence of the lack of such coverage in a separate box for important notices. The consumer group also recommended specific language for such a notice.

As noted above, one consumer group also requested that the Bureau consider adding additional information to the registration and insurance disclosure in the short form, such as an explanation of what protections in addition to insurance eligibility registration provides or more fulsome information about the implications of insurance coverage. As discussed in connection with § 1005.18(b)(2)(xi), the Bureau is declining to add any more information to the registration/insurance disclosure in the short form disclosure, but has concluded that it would be useful to require financial institutions to provide more detailed information about insurance coverage in the long form disclosure. *See* final § 1005.18(b)(4)(iii).

Thus, for the reasons set forth herein, the Bureau is finalizing proposed § 1005.18(b)(2)(ii)(D), renumbered as § 1005.18(b)(4)(iii), with substantial modifications. Specifically, the Bureau

is requiring a more fulsome disclosure regarding insurance, as well as the statement directing the consumer to register the account, where applicable. The Bureau has made other technical modifications to the rule for conformity and clarity.

Unlike the proposal, final § 1005.18(b)(2)(xi) requires that financial institutions disclose a statement regarding eligibility for FDIC deposit insurance or NCUA share insurance, as appropriate, rather than just a statement in situations where the prepaid account was not eligible for insurance. Final § 1005.18(b)(2)(xi) also requires that the statement direct the consumer to register the prepaid account for insurance and other account protections, where applicable, which had been a separate provision in the proposal. In addition, final § 1005.18(b)(4)(iii) requires an explanation of FDIC or NCUA insurance coverage and the benefit of such coverage or the consequence of the lack of such coverage, as applicable. New comment 18(b)(4)(iii)–1 provides examples illustrating how this disclosure might be made for FDIC and NCUA insurance in certain circumstances, and cross-references final comment 18(b)(2)(xi)–1 for guidance as to when NCUA insurance coverage should be disclosed instead of FDIC insurance coverage.

As discussed in the section-by-section analysis of § 1005.18(b)(2)(xi), the Bureau is persuaded by commenters, the results of its post-proposal consumer testing, and information received during the interagency consultation process that the registration and insurance disclosures should be combined, and that both the existence as well as the lack of insurance eligibility should be disclosed. The Bureau also believes that mirroring the § 1005.18(b)(2)(xi) disclosure in the long form will assist consumers in comparison shopping and reinforce the need to register prepaid accounts, where applicable.

As discussed above, while the Bureau's post-proposal consumer testing confirmed that some consumers erroneously equate FDIC coverage with fraud or theft protection, a number of participants understood that the insurance protects consumers' funds in the case of bank insolvency.[454] Absent the space limitations of the short form disclosure, the Bureau believes the long form disclosure provides an optimal opportunity to briefly, but more fully, explain the implications of insurance coverage or lack thereof. The Bureau does not believe it necessary to prescribe the exact content of this disclosure because circumstances may vary for a particular prepaid account program; thus, the final rule requires only that the long form include (in addition to the statement required in the short form pursuant to final § 1005.18(b)(2)(xi)) an explanation of FDIC or NCUA insurance coverage and the benefit of such coverage or the consequence of the lack of such coverage, as applicable.

As noted above in the section-by-section analysis of § 1005.18(b)(2)(xi), the final rule refers to NCUA, rather than NCUSIF, insurance for credit unions. After further consideration and based on information received during the interagency consultation process, the Bureau believes the term ''NCUA'' may be more meaningful to consumers than ''NCUSIF'' and has revised the disclosures accordingly in both final § 1005.18(b)(2)(xi) and (4)(iii).

18(b)(4)(iv) Statement Regarding Overdraft Credit Features

Under the proposed rule, fees relating to overdraft and certain other credit features would have been subject to the general requirement in proposed § 1005.18(b)(2)(ii)(A) to disclose all fees and the condition under which they may be imposed, as well as the requirement in proposed § 1005.18(b)(2)(ii)(B) to provide certain Regulation Z disclosures if, at any point, a covered credit plan might have been offered in connection with the prepaid account. The proposed rule would not have required a basic statement in the long form regarding whether an overdraft or credit feature could be provided at all in connection with the prepaid account, parallel to the proposed statement in the short form.

Several consumer groups recommended that the long form, as the more comprehensive disclosure, should indicate whether the financial institution offers overdraft or other credit features in connection with that prepaid account program. The Bureau agrees that the long form disclosure, like the short form disclosure, should include an explicit statement as to whether or not the prepaid account offers any overdraft or credit feature because this is key information for consumers to consider in making their purchase and use decisions regarding prepaid accounts. See the section-by-section analysis of § 1005.18(b)(2)(x) above for further discussion of this disclosure requirement generally. While a financial institution offering a prepaid account program with an overdraft credit feature must disclose in the long form any fees that are imposed in connection with the prepaid account pursuant to final § 1005.18(b)(4)(ii), the Bureau believes a more explicit statement regarding the existence or lack of such a feature is also appropriate, as the availability of such a feature may not be obvious depending on the nature of the fees imposed in connection with the overdraft credit feature and where they are imposed (*i.e.,* on the prepaid account or on the covered separate credit feature). Moreover, inclusion of this statement makes the short form and long form disclosures parallel with regard to the disclosure of the existence of such a feature and, if one may be offered, the duration of the waiting period, and that fees would apply.

For these reasons, the Bureau is adopting the final rule with the additional requirement in new § 1005.18(b)(4)(iv) to disclose in the long form the same statement regarding overdraft credit features required in the short form pursuant to final § 1005.18(b)(2)(x).

18(b)(4)(v) Statement Regarding Financial Institution Contact Information

Proposed § 1005.18(b)(2)(ii)(C) would have required disclosure of the telephone number, mailing address, and Web site 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 written copy of transaction history pursuant to proposed § 1005.18(c)(1)(iii) if the financial institution does not provide periodic statements pursuant to existing § 1005.9(b), or to notify the person or office when a consumer believes that an unauthorized EFT has occurred as required by existing § 1005.7(b)(2) and proposed § 1005.18(d)(1)(ii).

Having received no comments on this portion of the proposal, and for the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(ii)(C), renumbered as § 1005.18(b)(4)(v), with technical modifications for conformity and clarity. The Bureau believes that it is axiomatic for the comprehensive long form disclosure to include the contact information for the financial institution or its service provider through which consumers may obtain information about their prepaid accounts and provide notice of unauthorized transfers.

[454] *See* ICF Report II at 15 and 26. In the first round of post-proposal testing, two out of nine participants understood that FDIC insurance is meant to protect their money in case of a bank failure; in the second round, approximately half of the 11 participants understood this.

18(b)(4)(vi) Statement Regarding CFPB Web Site and Telephone Number

The Bureau's Proposal

Proposed § 1005.18(b)(2)(ii)(D) would have required disclosure of 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 about a prepaid account. As discussed in the proposal and the section-by-section analysis of § 1005.18(b)(2)(xii) above, 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 prepaid account disclosures. The Bureau also believed that consumers would benefit from seeing on the long form disclosure the Consumer Financial Protection Bureau's Web site and telephone number that they can use to submit a complaint about a prepaid account.

Comments Received

As discussed in the section-by-section analysis of § 1005.18(b)(2)(xii) above, a group advocating on behalf of business interests opposed disclosing contact information for the Bureau in both the short form and long form disclosures. The commenter suggested that disclosure in the long form of a Bureau Web site URL and telephone number through which consumers could submit complaints about prepaid cards would undermine the relationship between financial institutions and their customers. The commenter said consumers should be encouraged to raise issues about their prepaid cards directly with the financial institution rather than directing those issues to the Bureau. An issuing bank similarly opposed the proposed requirement to include in the long form contact information through which consumers could submit complaints about their prepaid accounts, saying that the statement casts prepaid cards in a negative light. The commenter instead supported disclosure of a neutral statement referring consumers to the Bureau for more information about prepaid products.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(ii)(D), renumbered as § 1005.18(b)(4)(vi), with certain modifications. Specifically, for clarity, the Bureau has added to the regulatory text the specific language for this statement. In addition, the Bureau made technical modifications to the rule for conformity and clarity.

Final § 1005.18(b)(4)(vi) requires inclusion in the long form of a statement directing the consumer to a Web site URL of the Bureau (*cfpb.gov/prepaid*) for general information about prepaid accounts, and a statement directing the consumer to the Bureau telephone number (1–855–411–2372) and Web site URL (*cfpb.gov/complaint*) to submit a complaint about a prepaid account, using the following clause or a substantially similar clause: ''For general information about prepaid accounts, visit *cfpb.gov/prepaid*. If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1–855–411–2372 or visit *cfpb.gov/complaint*.'' In the final rule, the Bureau has added the word ''general'' to the statement that the Bureau Web site provides ''general information'' about prepaid accounts for parity with final § 1005.18(b)(2)(xii).

The Bureau is not persuaded by industry commenters that it should not include these disclosure requirements in the final rule. In the same vein, regarding the long form disclosure of the telephone number and Web site URL for submitting a complaint, the Bureau believes it both logical and crucial to inform consumers of an available resource that can help them connect with financial institutions so their complaints about prepaid accounts can be heard and addressed. Indeed, the Bureau included a similar requirement in the Remittance Rule; there, remittance transfer providers must disclose the Bureau's contact information on the receipt provided in conjunction with a remittance transfer.[455] In the preamble to the final Remittance Rule, the Bureau explained that such a disclosure requirement was necessary to ensure consumer complaints about remittance transfer providers were centralized in one place.[456]

18(b)(4)(vii) Regulation Z Disclosures for Overdraft Credit Features

The Bureau's Proposal

Proposed § 1005.18(b)(2)(ii)(B) would have required the financial institution to include in the long form the disclosures described in Regulation Z § 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. Regulation Z § 1026.60 sets forth disclosure requirements for credit and charge card application and solicitations commonly referred to as ''Schumer Box'' disclosures. Section 1026.60(b) lists the required disclosure elements, § 1026.60(a) contains general rules for such disclosures, and § 1026.60(c) contains specific requirements for direct mail and electronic applications and solicitations. Proposed § 1005.18(b)(2)(ii)(B) would have explained that a credit plan that would be a credit card account under proposed Regulation Z § 1026.2(a)(15) could be structured either as a credit plan that could be accessed through the same device that accesses the prepaid account, or through an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor offering the plan.

The Bureau recognized that Regulation Z does not require these disclosures to be provided until a consumer is actually solicited for a credit plan. The Bureau, however, believed it would be 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 would have been required to be disclosed in the short form 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 in the proposal, the Bureau believed it would be 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 30 days after registering a particular prepaid account pursuant to proposed § 1005.18(g) and proposed Regulation Z § 1026.12(h).

Proposed comment 18(b)(2)(ii)(B)–1 would have clarified that the disclosures described in Regulation Z § 1026.60(a), (b), and (c) must appear in the form required under § 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 recognized 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 believed, 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.

[455] § 1005.31(b)(2)(vi).

[456] 77 FR 6194, 6229 (Feb. 7, 2012).

Comments Received

An issuing bank opposed the proposed requirement to include the above-cited Regulation Z disclosures along with the long form disclosure, arguing that providing this level of detail regarding a potential overdraft or credit feature of a prepaid account is not logical at the pre-acquisition stage. It cautioned the information disclosed will likely be outdated by the time a consumer seeks or is offered such credit, and suggested that consumers may become confused or angry if the actual credit terms offered differ from those disclosed in the long form, which it said is likely considering the mandatory 30-day waiting period before solicitation and infrequency with which the proposed rule would have required updating disclosures in a retail location. It stated that this would result in stale Regulation Z disclosures, including the APR, that could be more than a year old at the time a consumer would actually apply for credit. The commenter suggested that the disclosures would confuse consumers who, upon seeing them in the long form disclosure, will likely assume credit is being or will be offered to them. The commenter also expressed concern that consumers seeking credit who do not ultimately qualify for it may be confused or angered and suspect the financial institution has engaged in discrimination or false advertising. Finally, the commenter expressed concern that consumers who do obtain credit may be confused by being provided with the Regulation Z disclosures again at the time of solicitation and, perhaps, with changed terms. In sum, the commenter recommended that the Bureau remove this long form requirement as likely to provide little consumer benefit but rather lead to significant consumer misunderstanding.

A consumer group commenter supported disclosure of the Regulation Z and E information on the same page, if possible.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(ii)(B), renumbered as § 1005.18(b)(4)(vii), with certain modifications. The Bureau is also finalizing proposed comment 18(b)(2)(ii)(B)–1, renumbered as 18(b)(4)(vii)–1, with certain revisions and is adding new comment 18(b)(4)(vii)–2, as discussed below.

Specifically, final § 1005.18(b)(4)(vii) requires that, as part of the long form disclosure, the disclosures required by Regulation Z § 1026.60(e)(1) must be given, in accordance with the requirements for such disclosures in § 1026.60, if a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, may be offered to a consumer in connection with the prepaid account. Under the proposal, a financial institution would have been required to include the Regulation Z disclosures pursuant to § 1026.60(a), (b), and (c). While the content required for disclosures given under Regulation Z § 1026.60(b) and (e)(1) are largely the same, the disclosures pursuant to § 1026.60(e)(1) are tailored for credit card applications and solicitations made available to the general public—commonly referred to as ''take one'' disclosures—which the Bureau believes to be more apt for inclusion in the long form.

As discussed in the proposal and in the section-by-section analysis of § 1005.18(b)(2)(x) above, the Bureau believes it is important for consumers to be informed of the key costs and terms of an overdraft credit feature in order to be able to make informed purchase and use decisions with regard to both prepaid accounts and associated overdraft credit features—even though they may not be eligible for the feature until after a waiting period or at all. In response to the comment suggesting that such information may become stale and cause consumer confusion or worse, the Bureau notes that Regulation Z § 1026.60(e)(1) permits inclusion in a prominent location in the disclosure of the date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date, as well as a statement and contact information regarding any change in the required information since it was printed. The Bureau has also added an additional provision to § 1005.18(b)(4)(vii), discussed below, limiting the requirement to update these disclosures. For an overview of the Bureau's overall approach to regulating overdraft credit features offered in conjunction with prepaid accounts, see the *Overview of the Final Rule's Amendments to Regulation Z* section below.

Final § 1005.18(b)(4)(vii) also provides that a financial institution may, but is not required to, include above the Regulation Z disclosures required by § 1005.18(b)(4)(vii), a heading or other explanatory information introducing the overdraft credit feature. Given the organization of the long form disclosure and the placement of the Regulation Z disclosures at the end, the Bureau believes it is appropriate to provide financial institutions this option in case they deem it necessary or appropriate to include brief additional text to orient or explain to consumers to the ensuing disclosures.

Finally, the final rule provides that a financial institution is not required to revise the disclosures required by final § 1005.18(b)(4)(vii) to reflect a change in the fees or other terms disclosed therein until such time as the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure. In conjunction with the final rule's incorporation of the Regulation Z § 1026.60(e)(1) disclosures, the Bureau believes it would be inefficient to require financial institutions to update their long form disclosures (and their initial disclosures, pursuant to final § 1005.18(f)(2)), each time a change is made to the fees and terms required to be included in the credit portion of that disclosure. The Bureau has thus added this exception, which mirrors the exception for third-party fees in final § 1005.18(b)(4)(ii) discussed above.

Final comment 18(b)(4)(vii)–1 provides guidance on where these disclosures must be located in the long form. Specifically, it states that if the financial institution includes the disclosures described in Regulation Z § 1026.60(e)(1), pursuant to final § 1005.18(b)(7)(i)(B), such disclosures must appear below the disclosures required by final § 1005.18(b)(4)(vi). If the disclosures provided pursuant to Regulation Z § 1026.60(e)(1) are provided in writing, these disclosures must appear in the form required by § 1026.60(a)(2), and to the extent possible, on the same page as the other disclosures required by final § 1005.18(b)(4). The Bureau continues to believe that consumers could more easily review these Regulation Z disclosures if they are on the same page as the rest of the long form information, although the Bureau understands that this may not be possible depending on the length of the prepaid account program's long form.

Final comment 18(b)(4)(vii)–2 explains that the updating exception in § 1005.18(b)(4)(vii) does not extend to any finance charges imposed on the prepaid account as described in final Regulation Z § 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in final § 1026.61 that are required to be disclosed on the long form pursuant to final § 1005.18(b)(4)(ii). This comment

also cross-references final comment 18(b)(4)(ii)–1.

18(b)(5) Disclosure Requirements Outside the Short Form Disclosure

The proposed rule did not include a prepaid account's purchase price or activation fee in the static portion of the short form disclosure. However, proposed comment 18(b)(2)(i)(B)(*8*)(I)–2 would have explained, among other things, that the price for purchasing or activating a prepaid account could be disclosed as an incidence-based fee for purposes of proposed § 1005.18(b)(2)(i)(B)(*8*)(I). (To qualify as an incidence-based fee under the proposal, the purchase price or activation fee would have had to be one of up to three fees, other than those disclosed as a static fee in the short form 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.)

An industry trade association recommended against requiring disclosure of the purchase price in the short form because, it said, consumers already are sufficiently alerted to its display on the packaging of the prepaid account or by the retailer. An issuing bank, on the other hand, recommended disclosure of the purchase price in the short form because, it said, consumers lack clarity on this fee in certain situations, such as when confronted with hundreds of prepaid cards in some retail settings. Several industry commenters, including an issuing bank, a program manager, and a trade association, recommended requiring disclosure of the activation fee instead of the purchase price. Several industry commenters recommended against requiring disclosure of the activation fee in the short form as an incidence-based fee because, they said, it is not a common fee and would be disclosed in the terms and conditions for the prepaid account. They suggested the activation fee be added as a static fee to the short form, perhaps in lieu of one of the incidence-based fees, if the Bureau's research indicated the fee was common enough. Otherwise, they recommended it be disclosed only in the long form.

A consumer group agreed that the purchase price should not be disclosed in the short form as a static fee because it would take up scarce space when there is no fee (such as for online purchases of prepaid accounts), the purchase price can be conspicuously disclosed on other parts of the packaging, consumers already take notice of the price they have to pay for a prepaid card, and it is a one-time fee such that disclosing it within the short form would overemphasize it and mislead consumers to compare it with recurring fees. It also said that, for prepaid account programs where consumers frequently buy new prepaid cards, the purchase price may appear in any case as an incidence-based fee. Conversely, a consumer group urged requiring disclosure of the purchase price and any activation fee; another consumer group specifically recommended disclosure of the purchase price as a static fee or, alternatively, as a potential incidence-based fee. In support of its recommendation, this latter commenter said its research indicated that nearly half of regular GPR users purchase new cards after exhausting their funds on their current card. Moreover, it said, being charged a purchase fee at the point of purchase does not mean the consumer understands that fee is reducing the amount of funds being loaded onto the card at purchase. It also warned that consumers could confuse the ''purchase fee'' with the ''per purchase fee.'' Individual consumers who submitted comments as part of a comment submission campaign organized by a national consumer advocacy group recommended that the short form disclosure include the purchase price.

With regard to branding, one industry commenter urged the Bureau to clarify that identification within the short form of the name of the prepaid issuer and the name of the prepaid account program would not violate the requirements of the rule.

For the reasons set forth below, the Bureau is adopting new § 1005.18(b)(5) and comments 18(b)(5)–1 and –2 to address issues of the disclosure of the purchase price and activation fee as well as identification of the financial institution and the prepaid account program. The final rule requires that, at the time a financial institution provides the short form, it must also disclose the following information: the name of the financial institution; the name of the prepaid account program; the purchase price for the prepaid account, if any; and the fee for activating the prepaid account, if any. Pursuant to final § 1005.18(b)(7)(iii), short form disclosures must contain only information required or permitted under final § 1005.18(b)(2). Thus, the information required by § 1005.18(b)(5) must appear outside of the confines of the short form disclosure.

New § 1005.18(b)(5) sets forth the required location for the above-referenced disclosures. In a setting other than a retail location, this information must be disclosed in close proximity to the short form. In a retail location, this information, other than the purchase price, must be disclosed on the exterior of the access device's packaging material. In a retail location, the purchase price must be disclosed either on the exterior of or in close proximity to the prepaid account access device's packaging materials. As described in more detail below, new comment 18(b)(5)–1 clarifies the content of the disclosure and comment 18(b)(5)–2 clarifies its location, including the meaning of ''close proximity.''

The Bureau agrees that, because the purchase price invariably is disclosed on the packaging or otherwise at the point of purchase prior to acquisition of a prepaid account, it is unnecessary to use the limited space in the short form to disclose this one-time fee as a static fee. The Bureau likewise agrees that it is unnecessary to use the limited space in the short form to disclose the activation fee as a static fee, as it is not a common fee and if charged is only incurred once. The Bureau also believes that including these fees as potential additional fee types in the disclosure under final § 1005.18(b)(2)(ix) is neither an optimal way to alert consumers to the cost of purchasing or activating a prepaid account nor a good use of the additional fee type disclosure. Because the Bureau believes it is important for consumers to be aware of this fee prior to purchase in all situations, it is requiring that the purchase price and activation fee be disclosed, but outside the short form disclosure.

To ensure that consumers see the purchase price, it must be disclosed in close proximity to the short form—except that in a retail location the financial institution has the option to disclose the purchase price on the exterior of the packaging for the prepaid account access device (other than in the short form) or in close proximity to the display of packaging. The Bureau understands that at present, the purchase price for prepaid accounts sold at retail is disclosed either on the exterior of the prepaid account access device's packaging or displayed near the packaging by the retailer. In an effort not to disturb this system, the Bureau is permitting disclosure of the purchase price in a retail location either on the exterior of or in close proximity to the prepaid account access device's packaging material. The Bureau believes that either location would provide consumers with ample opportunity to be alerted to a prepaid account's purchase price.

While the activation fee is not a common fee, unless it is plainly disclosed prior to acquisition when it does exist, the Bureau is concerned that it likely would not be noticed by many consumers before they acquire the prepaid account. The Bureau has observed that, similar to purchase price, financial institutions that charge activation fees for prepaid accounts sold at retail often conspicuously disclose the activation fee on the front of the packaging. The Bureau believes that it is important that consumers be informed if a prepaid account they are considering charges an activation fee. The Bureau also believes that, considering that activation fees are uncommon, incurred once, and that in the current marketplace the Bureau has observed such fees disclosed on the front of the packaging in a retail setting, it is appropriate to require the disclosure outside the confines of the short form but in close proximity to it—and, in retail locations, on the exterior of the access device's packaging material. The Bureau believes this requirement will more clearly apprise consumers of when the activation fee is charged and the amount of the fee.

Regarding the general issue of branding, branding information is not permitted to be included within the short form. However, the Bureau recognizes the importance to both industry and consumers of connecting the short form disclosure with the prepaid account's commercial identity. The Bureau understands that it is common industry practice for financial institutions offering prepaid accounts at retail to include this information on the exterior of their packaging. The Bureau believes it is important for this information to be readily available for all prepaid programs, not just those sold at retail. For this reason, the Bureau is requiring, pursuant to new § 1005.18(b)(5), that the name of the financial institution and the name of the prepaid program be disclosed outside the short form but in close proximity to it or, in retail locations, on the exterior of the prepaid account access device's packaging material.

New comment 18(b)(5)–1 clarifies that, in addition to the disclosures required by final § 1005.18(b)(5), a financial institution may, but is not required to, also disclose the name of the program manager or other service provider involved in the prepaid account program.

New comment 18(b)(5)–2 provides additional guidance regarding the location requirement of the rule and the meaning of ''close proximity.'' The comment explains that, for example, if a financial institution provides the short form online, the information required by final § 1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if it appears on the same Web page as the short form disclosure. If the financial institution offers the prepaid account in its own branch locations and provides the short form disclosure on the exterior of its preprinted packaging materials, the information required by final § 1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if the information appears on the exterior of the packaging. If the financial institution provides written short form disclosures in a manner other than on preprinted packaging materials, such as on paper, the information required by final § 1005.18(b)(5) is deemed disclosed in close proximity to the short form if it appears on the same piece of paper as the short form disclosure. If the financial institution provides the short form disclosure orally, the information required by final § 1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if it is provided immediately before or after disclosing the fees and information required pursuant to final § 1005.18(b)(2).

Comment 18(b)(5)–2 also explains that, for prepaid accounts sold in a retail location pursuant to the retail location exception in final § 1005.18(b)(1)(ii), final § 1005.18(b)(5) requires the information other than purchase price be disclosed on the exterior of the access device's packaging material. If the purchase price, if any, is not also disclosed on the exterior of the packaging, disclosure of the purchase price on or near the sales rack or display for the packaging materials is deemed disclosed in close proximity to the short form disclosure.

18(b)(6) Form of Pre-Acquisition Disclosures

Proposed § 1005.18(b)(3) would have set forth the requirements for how the short form and long form disclosures must be presented. Specifically, proposed § 1005.18(b)(3)(i) would have set forth general requirements for written, electronic, and oral disclosures. Proposed § 1005.18(b)(3)(ii) would have provided requirements regarding whether these disclosures must be made in a retainable form. Proposed § 1005.18(b)(3)(iii) would have set forth parameters for the tabular form in which the disclosures must be presented, including specific requirements for short forms presenting fee disclosures for multiple service plans. The Bureau has renumbered these provisions, each discussed in detail below, under § 1005.18(b)(6) in the final rule.

18(b)(6)(i) General

18(b)(6)(i)(A) Written Disclosures

Proposed § 1005.18(b)(3)(i)(A) would have required that the short form and long form disclosures be provided in writing, except as provided in proposed § 1005.18(b)(3)(iii)(B) and (C) for electronic and oral disclosures. The Bureau believed consumers could best review the terms of a prepaid account before acquisition when seeing these disclosures in written form.

The Bureau did not receive any comments specific to this proposed general requirement to provide the short form and long form disclosure in writing, and therefore, is adopting proposed § 1005.18(b)(3)(i)(A), renumbered as § 1005.18(b)(6)(i)(A), with minor modifications for clarity. The final rule states that, except as provided in final § 1005.18(b)(6)(i)(B) and (C), the disclosures required by final § 1005.18(b) must be in writing.

18(b)(6)(i)(B) Electronic Disclosures

The Bureau's Proposal

Currently, § 1005.4(a)(1) permits disclosures required by Regulation E to be provided in electronic form, subject to compliance with consumer consent and other applicable provisions of the E-Sign Act. 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 delivery format requirements are met. Before receiving such consent, the E-Sign Act requires financial institutions to make clear to a consumer that the consumer has 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 the consumer's relationship with the financial institution, and to inform a consumer of how the consumer could withdraw consent and update information needed to contact the consumer electronically, among other requirements. The E-Sign Act also requires financial institutions to retain records of any disclosures that have been provided to a consumer electronically so that the consumer can access them later.

When the Bureau issued regulations on remittance transfers in subpart B of Regulation E, the Bureau altered the general requirement to provide disclosures in writing, such that

pursuant to § 1005.31(a)(2) remittance transfer providers may provide pre-payment disclosures electronically when remittance transfers are requested electronically. Comment 31(a)(2)–1 explains that in such circumstances, the pre-payment disclosures may be provided without regard to the consumer consent and other applicable provisions of the E-Sign Act.

The Bureau similarly proposed to modify Regulation E's default requirements for pre-acquisition disclosures for prepaid accounts. Specifically, proposed § 1005.18(b)(3)(iii)(B) would have required a financial institution to provide the short form and long form disclosures 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. Although the Bureau believed that consumers can best review the terms of a prepaid account before acquiring it when seeing the terms in written form, it recognized that in certain situations, it is not practicable to provide written disclosures. For example, when a consumer acquires a prepaid account via the internet, the Bureau believed that a financial institution could not easily provide written (non-electronic) disclosures to a consumer pre-acquisition.

Proposed § 1005.18(b)(3)(i)(B) also would have stated that short form and long form disclosures required by proposed § 1005.18(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. In addition, proposed § 1005.18(b)(3)(i)(B) would have provided that these electronic disclosures need not meet the consumer consent and other applicable provisions of the E-Sign Act. Last, proposed § 1005.18(b)(3)(i)(B) would have required that disclosures provided to a consumer through a Web site where required by proposed § 1005.18(b)(1)(ii)(C) and as described in proposed § 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.

Similar to pre-payment disclosures for remittance transfers, the Bureau believed that altering the general Regulation E requirement for electronic disclosures in § 1005.4(a)(1) was necessary to ensure that consumers receive relevant information at the appropriate time. The Bureau believed that during the pre-acquisition time period for prepaid accounts, it was important for consumers who decide to go online to acquire prepaid accounts to see the relevant disclosures for that prepaid account product in electronic form. The Bureau also said it 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 prepaid accounts' Web sites, consumers cannot make an informed acquisition decision. Accordingly, the Bureau believed that, for acquisition of prepaid products via the internet or mobile applications, it would be more appropriate to require financial institutions to provide pre-acquisition disclosures electronically.

As discussed above, § 1005.4(a)(1) requires that financial institutions comply with the E-Sign Act when providing disclosures electronically. The Bureau did not propose to require such compliance for prepaid accounts that are acquired through the internet or mobile applications. Proposed § 1005.18(b)(3)(i)(B) only would have required that electronic short form and long form disclosures for prepaid accounts acquired through the internet be provided electronically in a manner which is reasonably expected to be accessible in light of how a consumer acquired the prepaid account. The Bureau believed that if a consumer has acquired a prepaid account through a Web site, it is reasonable to expect that the consumer would be able to view electronic disclosures on a Web site, and no E-Sign consent would be necessary. The Bureau also noted in the proposal that the requirement in proposed § 1005.18(b)(3)(i)(B) would apply only to the pre-acquisition disclosure of the short form and long form disclosures for prepaid accounts acquired over the internet or via mobile applications. It would not have altered the application of § 1005.4(a)(1) to prepaid accounts after acquisition nor to any other type of account.

The Bureau also proposed comment 18(b)(3)(i)(B)–1, which would have explained how to disclose the short form and long form electronically. Specifically, the proposed comment would have explained that a financial institution may, at its option, provide the short form and long form disclosures on the same Web page or on two different Web pages as long as the disclosures were provided in accordance with the pre-acquisition disclosure requirements in proposed § 1005.18(b)(1)(i). The Bureau recognized, 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. Sometimes the disclosures are buried several pages deep or are only accessible to a consumer after the consumer completes some form of registration or otherwise logs onto the Web site. The Bureau generally believed that pre-acquisition 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, as addressed in proposed § 1005.18(b)(1) and proposed comment 18(b)(1)–2.

Proposed comment 18(b)(3)(i)(B)–2 would have provided guidance with respect to the lack of an E-sign requirement for prepaid account pre-acquisition disclosures. The proposed comment would have clarified that, 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.

Proposed comment 18(b)(3)(i)(B)–3 would have clarified that a disclosure would not comply with the requirement in § 1005.18(b)(3)(i)(B) regarding machine-readable text if it was not provided in a textual format that can be read automatically by internet search engines or other computer systems.

Comments Received

Several industry commenters, including industry trade associations, program managers, and a digital wallet provider as well as some consumer groups commented on the Bureau's proposal regarding electronic disclosure of the short form and long form. The Bureau received no comments regarding the requirement that disclosures be provided in machine-readable text.

Industry commenters primarily asked for clarification regarding the placement and treatment of the short form and long form disclosures in an online setting. Some commenters indicated that prepaid cards increasingly will be marketed and acquired via the internet, including through mobile applications and wearable devices. Commenters said that the rule, as proposed, did not sufficiently address how to comply when providing the short form and long form disclosures via these electronic delivery methods. One commenter noted that the prescriptive font size and other form and formatting requirements of the proposed rule remove the flexibility to shrink or resize disclosures to fit onto mobile screens, which could result in a confusing and frustrating user experience in which it would be impossible to view the entire disclosure

at once without zooming out to a wider view.

One consumer group supporting the proposed requirement regarding electronic disclosure of the short form and long form urged the Bureau to additionally require that financial institutions also provide the disclosures in writing if they issue physical cards. Another consumer group expressed concern that consumers may not see the electronic disclosures and recommended that the Bureau require they be prominently displayed on financial institutions' Web sites. It also urged the Bureau to adopt specific rules regarding location of the short form and long form disclosures on the financial institution's Web site.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(3)(i)(B), renumbered as § 1005.18(b)(6)(i)(B), with certain modifications. First, the Bureau has added requirements to the final rule that electronic disclosures be provided in a responsive form and viewable across all screen sizes. Second, the Bureau has made technical modifications to the rule and comments for consistency and clarity. Third, in response to the comments discussed above, the final rule and commentary more specifically address how to provide the required disclosures through electronic means. Fourth, in the final rule the Bureau has removed proposed comment 18(b)(3)(i)(B)–2 because it believes the rule is clear that financial institutions may provide disclosures electronically without regard to consumer consent and other applicable provisions of the E-Sign Act. Finally, final comments 18(b)(6)(i)(B)–1 and –2 now specifically address access to the required disclosures on Web sites and final comment 18(b)(6)(i)(B)–3, which addresses machine-readable text, is adopted generally as proposed.

The final rule requires that the disclosures required by final § 1005.18(b) must be provided in electronic form when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and must be viewable across all screen sizes. The Bureau has added the requirement that these disclosures be viewable across all screen sizes to clarify that they must be able to be seen by consumers regardless of the electronic method used. The final rule also states that the long form disclosure must be provided electronically through a Web site when a financial institution is offering prepaid accounts at a retail location pursuant to the retail location exception in final § 1005.18(b)(1)(ii). The rule also finalizes the proposed requirements that electronic disclosures must be provided in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account, in a responsive form, and using machine-readable text that is accessible via web browsers or mobile applications, as applicable, and via screen readers. Also, the final rule, like the proposed rule, provides that electronic disclosures provided pursuant to final § 1005.18(b) need not meet the consumer consent and other application provisions of the E-Sign Act.

Final comment 18(b)(6)(i)(B)–1 explains the rule's requirement that electronic disclosures be provided in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account. Specifically, the comment states that, for example, if a consumer is acquiring a prepaid account via a Web site or mobile application, it would be reasonable to expect that a consumer would be able to access the disclosures required by final § 1005.18(b) on the first page or via a direct link from the first page of the Web site or mobile application or on the first page that discloses the details about the specific prepaid program. The comment also cross-references final comment 18(b)(1)(i)–2 for additional guidance on placement of the short form and long form disclosures on a Web page. The additions to comment 18(b)(6)(i)(B)–1 respond to comments requesting clarification regarding the required location of the short form and long form disclosures when provided via electronic means.

In response to commenters' concerns discussed above, new comment 18(b)(6)(i)(B)–2 specifically addresses how to provide the required disclosures in a way that responds to smaller screen sizes. The comment clarifies that, in accordance with the requirement in final § 1005.18(b)(6)(i)(B) that electronic disclosures be provided in a responsive form, electronic disclosures provided pursuant to final § 1005.18(b) must be provided in a way that responds to different screen sizes, for example, by stacking elements of the disclosures in a manner that accommodates consumer viewing on smaller screens, while still meeting the other formatting requirements set forth in final § 1005.18(b)(7). For example, the disclosures permitted by final § 1005.18(b)(2)(xiv)(B) or (3)(ii) must take up no more than one additional line of text in the short form disclosure. The comment explains that if a consumer is acquiring a prepaid account using a mobile device with a screen too small to accommodate these disclosures on one line of text in accordance with the size requirements set forth in final § 1005.18(b)(7)(ii)(B), a financial institution is permitted to display the disclosures permitted by final § 1005.18(b)(2)(xiv)(B) and (3)(ii), for example, by stacking those disclosures in a way that responds to smaller screen sizes, while still meeting the other formatting requirements in final § 1005.18(b)(7). The Bureau's source code for web-based disclosures provides an example of stacking.[457]

Final comment 18(b)(6)(i)(B)–3, which addresses machine-readable text, clarifies that a disclosure would not be deemed to comply with § 1005.18(b)(6)(i)(B) if it was not provided in a form that can be read automatically by internet search engines or other computer systems. As noted in the proposal, this textual format could include, for example, JSON, XML, or a similar format.

18(b)(6)(i)(C) Oral Disclosures

The Bureau proposed § 1005.18(b)(3)(i)(C), which would have stated that disclosures required by proposed § 1005.18(b)(2)(i) must be provided orally when a consumer acquires a prepaid account orally by telephone as described in proposed § 1005.18(b)(2)(iii). Proposed § 1005.18(b)(3)(i)(C) would have also stated that disclosures provided to a consumer through the telephone number described in proposed § 1005.18(b)(2)(i)(B)(*11*) also must be made orally. The Bureau believed that when a consumer acquires a 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 would not be practicable for a financial institution to provide these disclosures in written form, and therefore it would be appropriate for oral disclosures to be provided.

The Bureau did not receive any comments specific to proposed § 1005.18(b)(3)(i)(C) and therefore, is adopting this provision generally as proposed, renumbered as § 1005.18(b)(6)(i)(C), with technical modifications to the rule for conformity and clarity. Specifically, the Bureau has made clear that this provision applies both when a consumer is acquiring a prepaid account in a retail location and

[457] *See www.consumerfinance.gov/prepaid-disclosure-files.*

orally by telephone. The Bureau continues to believe that when consumers acquire a prepaid account orally by telephone or in a retail location, consumers should nonetheless have the benefit of pre-acquisition disclosures. Thus, final § 1005.18(b)(6)(i)(C) states that disclosures required by final § 1005.18(b)(2) and (5) must be provided orally when a consumer acquires a prepaid account orally by telephone as described in final § 1005.18(b)(1)(iii). For prepaid accounts acquired in retail locations or orally by telephone, disclosures required by final § 1005.18(b)(4) provided by telephone pursuant to final § 1005.18(b)(1)(ii)(B) or final § 1005.18(b)(1)(iii)(B) also must be made orally.

18(b)(6)(ii) Retainable Form

The Bureau's Proposal

Proposed § 1005.18(b)(3)(ii) would have provided that, except for disclosures provided to a consumer through the telephone number described in proposed § 1005.18(b)(2)(i)(B)(*11*) or disclosures provided orally pursuant to proposed § 1005.18(b)(1)(iii), disclosures required by proposed § 1005.18(b)(2)(i) and (ii) must be made in a retainable form. Proposed comment 18(b)(3)(ii)–1 would have explained 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.

As noted in the proposal, § 1005.13(b) contains recordkeeping requirements applicable to Regulation E generally. However, the Bureau did not believe it was necessary that the oral disclosures provided to a consumer for a prepaid account acquired orally by telephone or the long form disclosure accessed by a consumer via telephone pre-acquisition in a retail store be retainable. Pursuant to proposed § 1005.18(f), after having acquired a prepaid account orally (or by any other means), a consumer would have received the long form disclosure in the initial disclosures provided for the prepaid account. Further, the long form disclosure would also generally 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. The Bureau also did not believe it would be practicable to provide retainable forms of oral disclosures. The Bureau did, however, believe that providing retainable forms of written and electronic disclosures would be feasible.

Comments Received

One consumer group commented regarding the proposed retainability requirement. It supported the proposed requirement generally but recommended that the Bureau clarify that electronic disclosures provided via a pop-up window must be able to be easily printed to comply with the rule.

The Final Rule

For the reasons set forth herein, and in the absence of comments raising concerns about the proposed retainability requirement, the Bureau is adopting proposed § 1005.18(b)(3)(ii), renumbered as § 1005.18(b)(6)(ii), with certain modifications. The Bureau has added additional specificity to this provision to clarify exceptions to the retainability requirements for certain disclosures permitted or required under the final rule. The Bureau has also added to the final rule a cross-reference to § 1005.4(a)(1), which generally requires that disclosures provided pursuant to Regulation E be in a form consumers may keep, and conforms the language in the final rule to parallel that of § 1005.4(a)(1). In addition, as set forth below, the Bureau is adopting revisions to comment 18(b)(3)(ii)–1, renumbered as comment 18(b)(6)(ii)–1. Finally, the Bureau has made technical modifications to the rule for conformity and clarity.

Final § 1005.18(b)(6)(ii) provides that, pursuant to § 1005.4(a)(1), disclosures required by § 1005.18(b) must be made in a form that a consumer may keep, except for disclosures provided orally pursuant to final § 1005.18(b)(1)(ii) or (iii), long form disclosures provided via SMS as permitted by final § 1005.18(b)(2)(xiii) for a prepaid account sold at retail locations pursuant to the retail location exception in final § 1005.18(b)(1)(ii), and the disclosure of a purchase price pursuant to final § 1005.18(b)(5) that is not disclosed on the exterior of the packaging material for a prepaid account sold at a retail location pursuant to the retail location exception in final § 1005.18(b)(1)(ii).

The Bureau continues to believe that its modification to the general retainability requirement in Regulation E for oral disclosures (and certain other disclosures) is appropriate, as the Bureau does not believe it would be practicable to provide retainable forms of oral disclosures. The Bureau also notes that the requirements of final § 1005.18(b)(1)(ii)(D) and (f)(1) will ensure that even consumers who acquire prepaid accounts orally by telephone or who access the long form disclosure for prepaid accounts sold at retail locations either orally or via SMS will receive the long form disclosure in a retainable format, albeit after they acquire the prepaid account.

Final comment 18(b)(6)(ii)–1 illustrates the retainability requirement with an example stating that a short form disclosure with a tear strip running through it would not be deemed retainable because use of the tear strip to gain access to the prepaid account access device inside the packaging would destroy part of the short form disclosure. Electronic disclosures are deemed retainable if the consumer is able to print, save, and email the disclosures from the Web site or mobile application on which they are displayed. Therefore, a pop-up window or modal [458] from which a consumer can only print, save, or email the disclosure by taking a screen shot of it would not satisfy the rule's retainability requirement.

The Bureau declines to require that electronic disclosures provided via a pop-up window be *easily* printed, as requested by a consumer group commenter because the Bureau believes such a standard is subjective and may be imprecise. The Bureau also cautions against the use of pop-up windows or modals from which it is difficult for consumers to figure out how to print or to actually print. Providing electronic disclosures in a manner which a consumer is not able to retain them by printing, saving, or emailing would not comply with this final rule and would be contrary to the general retainability requirement for disclosures provided under Regulation E.

18(b)(6)(iii) Tabular Format

18(b)(6)(iii)(A) General

The Bureau's Proposal

The Bureau set forth in proposed § 1005.18(b)(3)(iii) the tabular format requirements that would be used to present the short and long form disclosures. Specifically, proposed § 1005.18(b)(3)(iii)(A) would have required 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. It also would have

[458] Modal windows, also known as dialog boxes or lightboxes, are ''pop-up'' elements that appear in front of a Web page, blocking the main page below. Similar to pop-up windows or system alerts, modals are unique because they prevent interaction with the page underneath.

required that long form disclosures required by proposed § 1005.18(b)(2)(ii) that are provided in writing or electronically shall be in a form of a table substantially similar to proposed Sample Form A–10(e).

The Bureau had observed that most (though not all) financial institutions currently use some sort of table to disclose fees in their prepaid account agreements, although each institution generally selects different fees to highlight and presents them in different orders. The Bureau also noted that financial institutions 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 and find them across various formats to determine the best product for their needs.

The Bureau's pre-proposal consumer testing revealed that few participants researched prepaid accounts before acquisition, particularly when they acquired their accounts in retail stores. The Bureau believed that one of the reasons that consumers do not often engage in comparison shopping is because doing so is not straightforward. At retail, prepaid accounts are often displayed behind counters, close to check-out lanes at ends of aisles, and in other often crowded or difficult to access areas which the Bureau believed can limit careful review of a product's terms. The Bureau believed 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 comparison shopping challenging. Although some variation is inevitable because each financial institution offers different services in connection with its prepaid accounts, the Bureau believed that requiring use of a standardized form to disclose fee information would be appropriate to minimize variation in presentation format. Additionally, in the case of the short form disclosure, a standardized form also would keep many of the fee types listed constant.

The Bureau proposed a sample form for the long form disclosure instead of a model form for the short form disclosure. The Bureau believed long form disclosures could vary depending on the number of fees included in the form and the extent of relevant conditions that would have had to be disclosed in connection with each fee.

Comments Received

While many commenters critiqued certain aspects of the proposed form and format of the short form and long form disclosures, the Bureau received no specific comments regarding the proposed general tabular format requirement for those disclosures. See the section-by-section analysis of § 1005.18(b)(7)(i) below for discussion of comments regarding grouping and other format requirements.

The Final Rule

For the reasons set forth herein, and in the absence of comments, the Bureau is adopting § 1005.18(b)(3)(iii)(A) as proposed, renumbered as § 1005.18(b)(6)(iii)(A), with certain modifications for clarity and to set forth more explicitly the content required in the tabular format.

The final rule requires that when a short form disclosure is provided in writing or electronically, the information required by final § 1005.18(b)(2)(i) through (ix) shall be provided in the form of a table. Except as provided in final § 1005.18(b)(6)(iii)(B), the short form disclosures required by final § 1005.18(b)(2) shall be provided in a form substantially similar to Model Forms A–10(a) through (d), as applicable. The final rule requires that specific sections of the short form disclosure be in a tabular format. The Bureau continues to believe that this standardized format will increase consumer comprehension and enhance comparability among prepaid accounts, thereby creating a system under which consumers have the tools to make improved purchase and use decisions with regard to prepaid accounts.

The final rule, like the proposed rule, also requires that when a long form disclosure is provided in writing or electronically, the information required by final § 1005.18(b)(4)(ii) shall be provided in the form of a table. Sample Form A–10(f) provides an example of the long form disclosure required by final § 1005.18(b)(4) when the financial institution does not offer multiple service plans. The Bureau has removed the proposed requirement that the table in the long form be substantially similar to the table in the proposed sample form in favor of the statement that Sample Form A–10(f) provides an example of the long form disclosure. As discussed in the section-by-section analysis of § 1005.18(b)(4) above, the sample form for the long form disclosure, unlike the model forms for the short form disclosures, does not impose a ''substantially similar'' requirement. Unlike the short form disclosure, the Bureau believes that the comprehensive content of the long form, together with the wide variety of fees, fee types, and conditions under which those fees are imposed across financial institutions, is likely not suitable for a strictly standardized content and format design.

Because the long form disclosures, unlike the standardized short form disclosure, could vary substantially, the Bureau continues to believe that it is more appropriate to provide a sample form as an example that financial institutions may, but are not required to, incorporate or emulate in their own long form disclosures, rather than a model form that would only provide a safe harbor if financial institutions adhered closely to its parameters. Thus, in the regulatory text of the final rule, the Bureau has replaced any reference to long form content required to be disclosed in a form substantially similar to a sample form with language indicating that the sample form provides an example of the long form disclosure.

18(b)(6)(iii)(B) Multiple Service Plans

The Bureau's Proposal

As an alternative to proposed § 1005.18(b)(3)(iii)(A) (which would have applied to products with a single fee schedule), proposed § 1005.18(b)(3)(iii)(B) would have set forth tabular format requirements for prepaid products offering multiple service plans. Specifically, proposed § 1005.18(b)(3)(iii)(B)(*1*) would have stated 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 in the short form disclosure by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*) may be provided for each service plan together in one table, in a form substantially similar to 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 have further stated that when disclosing multiple service plans on one short form, the information that would have been 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 have permitted a financial institution to disclose the information required by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*8*) 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 Forms A–10(c) or (d). Finally, proposed § 1005.18(b)(3)(iii)(B)(*1*) would have stated that 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 automatically enrolled by default, the disclosures required by proposed § 1005.18(b)(2)(i)(B)(*9*) through (*14*) must only be disclosed once.

As discussed in the proposal and herein, the Bureau believed that it was important for short and long form disclosures to have a standardized format in order to facilitate consumer comparison of multiple products and the ability to understand key fee and service information about a prepaid product. The Bureau also recognized, however, that financial institutions offering multiple service plans on one prepaid account needed flexibility to disclose information about multiple plans to a consumer. The Bureau therefore proposed 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. The Bureau explained that, a financial institution, at its option, could also choose to disclose only 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 believed that these options would give financial institutions the flexibility to accommodate disclosure of multiple service plans, while also maintaining the simplicity of the tabular short form and long form designs to facilitate consumers' comparison shopping.

In the Bureau's pre-proposal consumer testing, some participants were confused by short forms that included multiple service plans similar to the one in proposed 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 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 believed 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 sought 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.

In the proposal, the Bureau also acknowledged 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 requirement in proposed § 1005.18(b)(2)(i)(C) that financial institutions would have to disclose the highest 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 consumers were to opt into a monthly plan, however, they could be charged a periodic fee higher than $0. The Bureau therefore also sought 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 have stated 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 believed that 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 proposed comment 18(b)(3)(iii)(B)–1, which would have provided additional guidance on the proposed definition of multiple service plans. Specifically, proposed comment 18(b)(3)(iii)(B)–1 would have stated 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. A financial institution may 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)(B).

Comments Received

Several industry commenters, including industry trade associations, a program manager, and an issuing bank, commented on the proposed multiple service plan short form disclosure and recommended that the Bureau adopt a final rule permitting such disclosures for prepaid account loyalty programs and other current and future innovative fee structures. Some commenters asserted that the proposed rule failed to contemplate loyalty programs and thus urged the Bureau to permit use of the multiple service plan short form disclosure for such programs. Commenters also asserted that the rule as proposed would stymie future innovation of new fee plans by limiting use of the multiple service plan short form disclosure to plans already in existence.

Several consumer groups urged the Bureau to eliminate the multiple service plan short form disclosure. They believed the multiple service plan short form disclosure compared poorly with the general short form disclosure, saying it was too complex and confusing, defeated the comparison-shopping purpose of the short form disclosure, failed to disclose all the information in the short form (such as the two-tier distinction between certain fees, including the in-network and out-of-network ATM withdrawal and balance inquiry fees), and lacked the top-line emphasis on key fees. Some of these groups also expressed concern that financial institutions seeking to minimize emphasis on certain of their fees might use the complexity of the multiple service plan short form disclosure to hide expensive fees, such as by starting with a pay-as-you-go plan with no monthly fee before disclosing higher fees for other plans.

Some consumer groups suggested that the Bureau require disclosure of the default fee plan in short forms at retail, and require that short form disclosures for the other plans be provided inside the packaging material or at the time the consumer chooses to switch to another fee plan. In other contexts that do not have the same space constraints as retail settings, such as online or at bank branches, consumer groups said the Bureau should require disclosure of

separate short forms for each distinct fee plan.

The Final Rule

The Bureau is adopting final § 1005.18(b)(6)(iii)(B) largely as proposed, but has divided the provision regarding multiple service plan short form disclosures to separately address disclosure of the default service plan and disclosure of all service plans. Other modifications to these provisions are described in turn below.

18(b)(6)(iii)(B)(1) Short Form Disclosure for Default Service Plan

For the reasons set forth herein, the Bureau is adopting the portion of proposed § 1005.18(b)(3)(iii)(B)(*1*) that addressed the option to disclose a short form only for a multiple service plan's default plan, renumbered § 1005.18(b)(6)(iii)(B)(*1*) with technical modifications to the rule for conformity and clarity.

Final § 1005.18(b)(6)(iii)(B)(*1*) provides that when a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, the information required by final § 1005.18(b)(2)(i) through (ix) may be provided in the tabular format described in final § 1005.18(b)(6)(iii)(A) for the service plan in which a consumer is initially enrolled by default upon acquiring a prepaid account. New comment 18(b)(6)(iii)(B)(*1*)–1 clarifies that, pursuant to the requirement in § 1005.18(b)(3)(i) to disclose the highest amount a financial institution may impose for a fee disclosed pursuant to § 1005.18(b)(2)(i) through (vii) and (ix), a financial institution would not be permitted to disclose any short-term or promotional service plans as a default service plan.

In accordance with § 1005.18(b)(3)(i), a financial institution providing a short form for a multiple service plan's default plan only must disclose the highest fees under the default plan but not the highest fees across all service plans. The Bureau believes that to require otherwise would distort the information disclosed about the default service plan, leading to potential consumer confusion.

The Bureau notes that financial institutions disclosing the default plan can inform consumers of the prepaid program's other service plan options outside the short form disclosure, such as on other portions of the packaging, online, or via the telephone; further, disclosure of all plan information is required in the long form pursuant to final § 1005.18(b)(4) discussed below. The Bureau also notes that nothing in the final rule would prohibit a financial institution from providing a short form disclosure for each of its service plans separately (such as on its Web site or in other acquisition scenarios without the same space constraints as in retail locations) though, if doing so, the Bureau encourages financial institutions to make clear to consumers which plan, if any, is the default plan.

18(b)(6)(iii)(B)(2) Short Form Disclosure for Multiple Service Plans

For the reasons set forth herein, the Bureau is adopting the portion of proposed § 1005.18(b)(3)(iii)(B)(*1*) that addressed the option to use a modified short form to disclose multiple service plans, renumbered § 1005.18(b)(6)(iii)(B)(*2*), with certain modifications as described below for clarity. In addition, for the reasons set forth below, the Bureau has modified comment 18(b)(3)(iii)(B)–1, renumbered as comment 18(b)(6)(iii)(B)(*2*)–1. The Bureau has also made other technical modifications for conformity.

Final § 1005.18(b)(6)(iii)(B)(*2*) provides that, as an alternative to disclosing the default service plan pursuant to § 1005.18(b)(6)(iii)(B)(*1*), when a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, fee disclosures required by final § 1005.18(b)(2)(i) through (vii) and (ix) may be provided in the form of a table with separate columns for each service plan in a form substantially similar to Model Form A–10(e). Column headings must describe each service plan included in the table, using the terms ''Pay-as-you-go plan,'' ''Monthly plan,'' ''Annual Plan,'' or substantially similar terms. For multiple service plans offering preferred rates or fees for the prepaid accounts of consumers who also use another non-prepaid service, column headings must describe each service plan included in the table for the preferred- and non-preferred service plans, as applicable.

The Bureau has substantially redesigned the multiple service plan short form disclosure in order to address many of the concerns raised by consumer group commenters as described above. The short form disclosure for multiple service plans includes the following changes: Expansion of the multi-columned table to disclose all required fees pursuant to final § 1005.18(b)(2)(i) through (vii) and (ix) together, rather than separating out fees that vary across plans from fees that do not; use of bold-face type for the fees listed pursuant to final § 1005.18(b)(2)(i) through (iv) to mirror the general short form disclosure's emphasis on the top-line fees; and addition of rows to separately disclose the two-tier fees for in-network and out-of-network ATM withdrawals and balance inquiries. *See* Model Form A–10(f).

The Bureau's post-proposal consumer testing indicated that the redesigned short form disclosure for multiple service plans markedly improved the disclosure's usability. Participants were able to navigate a prototype short form disclosure for multiple service plans and to use the disclosure to find specific information about particular plans. Moreover, the relative complexity of the form, although off-putting to some participants, did not appear to alter testing results.[459] Most participants quickly understood that the columns in the table represented different potential fee plans and all were generally able to compare fees in that form with the fees in a general short form disclosure. In light of comments received on the proposed version of the multiple service plan short form and the results of the Bureau's post-proposal consumer testing of the redesigned form, the Bureau is finalizing the rule permitting use of a short form disclosure for multiple service plans.

The Bureau recognizes that financial institutions offering multiple service plans may not have a default plan or may find a requirement to disclose only a short form for the default plan overly restrictive and choose instead to discontinue their multiple service plan programs. The Bureau does not intend to disfavor any prepaid account program over another in its rule and seeks to avoid potential disruption to prepaid account programs offering multiple service plans. While the Bureau acknowledges that the relative complexity and density of the multiple service plan short form disclosure may render it somewhat less consumer friendly than the general short form disclosure, the Bureau believes the redesigned form will provide financial institutions with flexibility to accommodate disclosure of products with multiple service plans, while also retaining much of the standardization of the short form design that facilitates comprehension and comparison shopping for consumers.

As referenced above, the rule sets forth specific requirements for the column headings required to describe each service plan. The Bureau is finalizing the proposed requirement to use the terms ''Pay-as-you-go plan,'' ''Monthly plan,'' ''Annual Plan,'' or substantially similar terms. To illustrate,

[459] *See* ICF Report II at 16 and 26–27.

final comment 18(b)(6)(iii)(B)(*2*)–1 states that, for example, a financial institution that offers a prepaid account program with one service plan for which 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, may use the short form disclosure for multiple service plans pursuant to final § 1005.18(b)(6)(iii)(B)(*2*).

As noted above, some industry commenters requested that the Bureau allow use of the multiple service plan short form for loyalty plans; this issue was addressed in proposed comment 18(b)(3)(iii)(B)–1. For clarity, the Bureau has addressed use of the multiple service plan short form for loyalty plans in the regulatory text of the final rule as described above. Final comment 18(b)(6)(iii)(B)(*2*)–1 reiterates that a financial institution that offers a prepaid account program with preferred rates or fees for the prepaid accounts of consumers who also use another non-prepaid service (*e.g.,* a mobile phone service), often referred to as ''loyalty plans,'' may also use the short form disclosure for multiple service plans pursuant to final § 1005.18(b)(6)(iii)(B)(*2*). The comment also explains that pricing variations based on whether a consumer elects to use a specific feature of a prepaid account, such as waiver of the monthly fee for consumers electing to receive direct deposit, does not constitute a loyalty plan. Final comment 18(b)(6)(iii)(B)(*2*)–1 also cross-references final comment 18(b)(3)(iii)–1.ii for guidance on how to provide a single disclosure for like fees for multiple service plan short form disclosures.

18(b)(6)(iii)(B)(3) Long Form Disclosure

Proposed § 1005.18(b)(3)(iii)(B)(*2*) would have required that the information required 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 did not receive any comments regarding this portion of the proposal.

The Bureau is adopting proposed § 1005.18(b)(3)(iii)(B)(*2*), renumbered as § 1005.18(b)(6)(iii)(B)(*3*), with a minor modification as described below, as well as with technical modifications for conformity and clarity.

Final § 1005.18(b)(6)(iii)(B)(*3*) states that the information in the long form disclosure required by final § 1005.18(b)(4)(ii) must be presented in the form of a table for all service plans. The Bureau has removed the proposed requirement that the table be substantially similar to proposed Sample Form A–10(g) and has also removed that proposed sample form from the final rule. As discussed in the section-by-section analysis of § 1005.18(b)(4) and § 1005.18(b)(6)(iii)(A) above, the final rule does not impose a substantially similar requirement for the sample form for the long form disclosure, unlike the model forms for the short form disclosures. This is because unlike the short form disclosure, the comprehensive content of the long form, together with the wide variety of fees, fee types, and conditions under which those fees are imposed across financial institutions, is not suitable for a strictly standardized content and format design. As discussed in the section-by-section analysis of *Appendix A–10 Model Forms and Sample Forms for Financial Institutions Offering Prepaid Accounts (§§ 1005.15(c) and 1005.18(b))* below, to provide more flexibility to industry, the Bureau is not providing a sample form for a long form disclosure with multiple service plans. The Bureau notes that Sample Form A–10(f) provides an example of a tabular format for the long form disclosure.

18(b)(7) Specific Formatting Requirements for Pre-Acquisition Disclosures

18(b)(7)(i) Grouping

18(b)(7)(i)(A) Short Form Disclosure

The Bureau's Proposal

Proposed § 1005.18(b)(4)(i)(A) would have contained several formatting requirements for the short form disclosure. First, proposed § 1005.18(b)(4)(i)(A) would have stated that the information that would have been required by proposed § 1005.18(b)(2)(i)(A) or proposed § 1005.15(c)(2), when applicable, must be grouped together. Proposed § 1005.18(b)(4)(i)(A) would have further stated that the information that would have been required by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) must generally be grouped together and in the order they appear in the form of proposed Model Forms A–10(a) through (d). The Bureau believed that grouping the fees that would have been required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) in the top line of the short form disclosure would more effectively direct consumers' attention to these fees. The Bureau also believed 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.

Proposed § 1005.18(b)(4)(i)(A) would have further stated that the information required by proposed § 1005.18(b)(2)(i)(B)(*5*) through (*9*) must generally be grouped together and in the order they appear in the form of proposed Model Forms A–10(a) through (d). The textual information required by proposed § 1005.18(b)(2)(i)(B)(*10*) through (*14*) must be generally grouped together and in the order they appear in proposed Model Forms A–10(a) through (d). The Bureau recognized that some consumers may focus only on fee information and not review textual information, and noted that, in its pre-proposal consumer testing many participants did not notice some of the textual information included on prototype short forms until the facilitator pointed it out to them.

The Bureau also proposed in § 1005.18(b)(4)(i)(A) that the Web site URL disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*) must not exceed 22 characters and must be meaningfully named. See the section-by-section analysis of § 1005.18(b)(2)(xiii) above for a discussion of this requirement in the final rule.

Comments Received

Several industry commenters addressed the proposed grouping or other related format requirements for the prepaid disclosures. A program manager supported the proposed grouping requirements saying they are reasonable and very similar to current disclosures, but cautioned that the short form disclosure format requirements would crowd out or dilute other critical information and oblige industry to extensively redesign current packaging. Another program manager said the rigidity of the format of the short form disclosure would limit the ability of industry to offer new types of prepaid cards. Two industry trade associations said the rule was unclear regarding the extent to which a financial institution could depart from the format of the required disclosures. In a comment generally addressing the format of the proposed disclosures, an issuing bank recommended that the short form and long form disclosures have the same format to avoid confusion and be recognizable.

The Final Rule

For the reasons set forth herein and in the absence of comments opposing the specific grouping requirements of the short form, the Bureau is adopting proposed § 1005.18(b)(4)(i)(A), renumbered as § 1005.18(b)(7)(i)(A),

with minor modifications. First, the Bureau has added references to the grouping requirements for the payroll card account disclosures set forth in final § 1005.18(b)(2)(xiv)(A) and (B). Second, the Bureau has made technical modifications to the rule for conformity and clarity.

The Bureau is adopting the proposed grouping requirements for the short form disclosure essentially as proposed. As stated in the proposal, the Bureau designed the top line of the short form disclosure to direct consumers' attention to what it believes are the most important fees for consumers to know in advance of acquiring a prepaid account. With regard to the statement regarding wage or salary payment options required for payroll card account (and government benefit account) short form disclosures, the Bureau believes that consumers understanding that their job (or government benefit) is not contingent upon their acceptance of the payroll card (or government benefit card) is of paramount importance in the short form disclosure. As in the proposed rule, the final rule generally groups fees together and non-fee information together. Similar to the proposed rule, the final rule also groups together the statements regarding fees that can vary, including new provisions § 1005.18(b)(3)(ii) (variable fee disclosure for the periodic fee) and § 1005.18(b)(2)(xiv)(B) (State-required information or other fee discounts and waivers for payroll card accounts and government benefit accounts).

The Bureau has made minor changes to the proposed grouping requirements. First, to conform to the principle stated above to group fees together and group other information together, the Bureau has relocated the statement regarding overdraft and credit, required by final § 1005.18(b)(2)(x), from the fee section in the proposed rule to a location among the non-fee other information. To more effectively connect the fee section with the statement regarding the number of additional fee types, required by final § 1005.18(b)(2)(viii)(A), the Bureau relocated this statement to the fee section. Finally, the new statement required by final § 1005.18(b)(2)(viii)(B) directing consumers to the disclosure of additional fee types required by final § 1005.18(b)(2)(ix) is located immediately after the statement regarding the number of additional fee types charged and immediately before the disclosure of any actual additional fee types.

Specifically, the final rule requires that the information required in the short form disclosure by final § 1005.18(b)(2)(i) through (iv) must be grouped together and provided in that order. The information required by final § 1005.18(b)(2)(v) through (ix) must be generally grouped together and provided in that order. The information required by final § 1005.18(b)(3)(i) and (ii), as applicable, must be generally grouped together and in the location described by § 1005.18(b)(3)(i) and (ii). The information required by final § 1005.18(b)(2)(x) through (xiii) must be generally grouped together and provided in that order.

The final rule also provides that the statement regarding wage or salary payment options for payroll card accounts required by final § 1005.18(b)(2)(xiv)(A) must be located above the information required by final § 1005.18(b)(2)(i) through (iv), as described in final § 1005.18(b)(2)(xiv)(A). The statement regarding State-required information or other fee discounts or waivers permitted by final § 1005.18(b)(2)(xiv)(B), when applicable, must appear in the location described in final § 1005.18(b)(2)(xiv)(B).

In response to comments generally addressing the format and formatting requirements of the short form and long form disclosures, the Bureau states that those requirements, together with the content requirements for the disclosures, were designed to create companion disclosures intended to facilitate consumers' prepaid account purchase and use decisions. The Bureau intended these disclosures to play very different but complementary roles and, thus, purposefully gave them different formats. The abridged nature of the short form, with its emphasis on key fees and information, versus the comprehensive nature of the long form, with its requirement to disclose, among other things, all fees and the conditions under which they may be imposed, require different formats that together create a synergistic whole.

Regarding the comments questioning the extent to which a financial institution could depart from the required format, financial institutions must comply with the disclosure requirements set forth in the final rule but the Bureau notes that the regulatory text and commentary contain additional information and direction clarifying specific requirements in the final rule, including a number of optional modifications. Also the Bureau is providing the model and sample forms to provide concrete illustrations of the requirements under the rule.[460] For examples of short form disclosures that comply with the grouping requirements of final § 1005.18(b)(7)(i)(A), see Model Forms A–10(a) through (d). Model Forms A–10(a) and (b) illustrate the grouping requirements specifically for payroll card accounts and government benefit accounts, respectively. Model Forms A–10(c) and (d) illustrate the grouping requirements for short form disclosures in general, including those sold in retail locations. Model Form A–10(e) illustrates the short form grouping requirements specifically for prepaid account programs with multiple service plans disclosed pursuant to final § 1005.18(b)(6)(iii)(B)(*2*); these grouping requirements are addressed in detail in final § 1005.18(b)(7)(i)(C) discussed below.

18(b)(7)(i)(B) Long Form Disclosure

The Bureau's Proposal

The Bureau proposed 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 have required 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 believed that disclosing fees in categories would 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 have required that 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 proposed § 1005.18(b)(2)(ii)(A). The information required by proposed § 1005.18(b)(2)(ii)(B) (that is, the Regulation Z disclosures regarding overdraft and other credit features) must be generally grouped together. The information required by proposed § 1005.18(b)(2)(ii)(C) through (E) (that is, the telephone number, Web site and mailing address; the statement regarding FDIC insurance, if applicable; and the Bureau Web site and telephone number), must be generally grouped together.

Comments Received

The Bureau received two comments from industry on the grouping

[460] For the convenience of the prepaid industry and to help reduce development costs, the Bureau is also providing native design files for print and source code for web-based disclosures for all of the model and sample forms included in the final rule. These files are available at *www.consumerfinance.gov/prepaid-disclosure-files.*

requirements of the long form disclosure. Both commenters requested that the Bureau provide examples of the categories of function required under the proposal in the long form disclosure.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(4)(i)(B), renumbered as § 1005.18(b)(7)(i)(B), with modifications to reflect additional content added by other provisions of the final rule. The Bureau has also made technical modifications to the rule for conformity and clarity. Finally, the Bureau has added new comments 18(b)(7)(i)(B)–1 and–2 to provide guidance regarding the requirements of final § 1005.18(b)(7)(i)(B).

First, the final rule addresses the grouping requirement for new § 1005.18(b)(4)(i), the title or heading for the long form disclosure. The final rule provides that the information required by new § 1005.18(b)(4)(i) be located in the first line of the long form disclosure.

The final rule, like the proposed rule, generally requires that like categories be grouped together in the long form disclosure. Regarding the disclosure in the long form of all fees and the conditions under which they may be imposed, the final rule, like the proposed rule, requires that the information required by final § 1005.18(b)(4)(ii) be generally grouped together and organized under subheadings by the category of function for which a financial institution may impose the fee.

While the proposed rule would have required that 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, the final rule relaxes this requirement. In the final rule, the text describing the conditions under which a fee may be imposed must appear in the table required by final § 1005.18(b)(6)(iii)(A) in close proximity to the fee amount. The Bureau continues to believe that disclosing fees in categories will aid consumers in navigating the long form disclosure which, with the disclosure of all of a prepaid account's fees, could be much longer than the short form disclosure and will benefit from such organization. The Bureau has observed that many financial institutions currently organize the fees schedules in their prepaid account agreements in this manner. With regard to the change to ''close proximity'' in the final rule, the Bureau believes that, while the short form disclosure necessitates stricter requirements to achieve more precise standardization, financial institutions should have more discretion in the long form. To this end, the sample form for the long form disclosure, as opposed to the model forms for the short form disclosures, serves as an example of a disclosure structure financial institutions may emulate or use to develop their own long form disclosure.

In response to the industry commenters requesting examples of the categories of function required in the long form disclosure, the Bureau directs financial institutions to the sample long form disclosure, Sample Form A–10(f). The sample form is provided as an example that financial institutions may, but are not required to, incorporate or emulate in developing their own long form disclosures. The following categories of function that appear in the sample form can serve as examples of categories that financial institutions might use in designing their long form disclosures: Get started (disclosing the purchase price), Monthly usage (disclosing the monthly fee), Add money (disclosing fees for direct deposit and cash reload), Spend money (disclosing bill payment fees), Get cash (disclosing ATM withdrawal fees), Information (disclosing customer service and ATM balance inquiry fees), Using your card outside the U.S. (disclosing fees for international transactions, international ATM withdrawals, and international ATM balance inquiries), and Other (disclosing the inactivity fee). Financial institutions may use some or all of the categories in the sample form or may create their own categories.

Regarding the statements in the long form disclosure, the rule requires that the information in the long form disclosure required by final § 1005.18(b)(4)(iii) through (vi) be generally grouped together, provided in that order, and appear below the information required by final § 1005.18(b)(4)(ii). As in the short form disclosure, the Bureau believes that grouping together like categories of information here will improve readability and enhance consumer comprehension.

Finally, the final rule explains that if, pursuant to final § 1005.18(b)(4)(vii), the financial institution includes the disclosures described in Regulation Z § 1026.60(e)(1), such disclosures must appear below the disclosures required by final § 1005.18(b)(4)(vi).

New comment 18(b)(7)(i)(B)–1 provides an example illustrating the meaning of close proximity as used in the final § 1005.18(b)(7)(i)(B). The comment states that, for example, a financial institution is deemed to comply with this requirement if the text describing the conditions is located directly to the right of the fee amount in the long form disclosure, as illustrated in Sample Form A–10(f). The comment also cross-references final comment 18(b)(6)(i)(B)–2 regarding stacking of electronic disclosures for display on smaller screen sizes. As discussed above, that comment describes how compliance with the requirements of § 1005.18(b)(7)(i)(B) may be achieved, for example, through stacking of the long form disclosure for a consumer viewing it on an electronic device with a smaller screen size.

New comment 18(b)(7)(i)(B)–2 explains how to create a subheading by category of function for any finance charges that may be imposed on a prepaid account as described in Regulation Z § 1026.4(b)(11)(ii) in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61. The comment explains that, pursuant to § 1005.18(b)(7)(i)(B), the financial institution may, but is not required to, group all finance charges together under a single subheading. The comment goes on to say that this includes situations where the financial institution imposes a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature. The comment illustrates this with an example of a financial institution that charges on the prepaid account a $0.50 per transaction fee for each transaction that accesses funds in the asset feature of a prepaid account and a $1.25 per transaction fee for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. In this case, the financial institution is permitted to disclose the $0.50 per transaction fee under a general transactional subheading and disclose the additional $0.75 per transaction fee under a separate subheading together with any other finance charges that may be imposed on the prepaid account.

18(b)(7)(i)(C) Multiple Service Plan Disclosure

The Bureau proposed 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 form, the

fees that would have been 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, and the fees that are the same across all service plans must be grouped together. *See* proposed Model Form A–10(f). Proposed § 1005.18(b)(4)(i)(C) would have further stated 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 believed that, when a financial institution chooses to disclose multiple service plans together on one short form, it would be 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 sought comment on whether this grouping distinction for short forms that include multiple service plans makes sense.

Proposed § 1005.18(b)(4)(i)(C) also would have stated that when providing disclosures for multiple service plans on one short form in compliance with proposed § 1005.18(b)(3)(iii)(B)(*1*), 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. The Bureau believed 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 made sense that these fees would be grouped with the fees that are the same across all service plans.

The Bureau received comments from industry and consumer groups regarding the multiple service plan short form generally, which are addressed in the section-by-section analysis of § 1005.18(b)(6)(iii)(B) above. Most relevant to this provision were the comments from several consumer groups that urged the Bureau to eliminate the multiple service plan short form disclosure. The Bureau did not receive any comments, however, specific to proposed § 1005.18(b)(4)(i)(C).

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(4)(i)(C), renumbered as § 1005.18(b)(7)(i)(C), with substantial modifications to reflect the redesigned short form for multiple service plans as discussed in the section-by-section analysis of § 1005.18(b)(6)(iii)(B) above.

The final rule's grouping requirements correspond to the formatting requirements for the redesigned short form disclosure for multiple service plans set forth in final § 1005.18(b)(6)(iii)(B)(*2*). Similar to the grouping requirements in the short form and long form disclosures, the final rule's grouping requirements for short form disclosures for multiple service plans conform to the principle of grouping fees together and grouping other information together. Specifically, final § 1005.18(b)(7)(i)(C) requires that when providing a short form disclosure for multiple service plans pursuant to final § 1005.18(b)(6)(iii)(B)(*2*), in lieu of the requirements in final § 1005.18(b)(7)(i)(A) for grouping of the disclosures required by final § 1005.18(b)(2)(i) through (iv) and (v) through (ix), the information required by final § 1005.18(b)(2)(i) through (ix) be grouped together and provided in that order. Model Form A–10(e) illustrates the grouping requirements specifically for short form disclosures with multiple service plans disclosed pursuant to final § 1005.18(b)(6)(iii)(B)(*2*).

18(b)(7)(ii) Prominence and Size

The Bureau's Proposal

Proposed § 1005.18(b)(4)(ii)(A) through (D) would have set forth the prominence and size requirements for the short form and long form disclosures. Generally, the Bureau believed that the information provided to consumers in the short form and long form disclosure should appear in a large enough font size to ensure that consumers can easily read the information. Further, the Bureau observed in its pre-proposal consumer testing that some participants had to use reading glasses or otherwise struggled to read existing prepaid account disclosures and that many participants reported a preference for larger font sizes to facilitate their ability both to read and to understand disclosures. Thus, the Bureau 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 believed that the proposed relative font sizes for the disclosures made on the short form would ensure that consumers' attention is quickly drawn to the most important information about a prepaid account (*i.e.,* the top-line fees).

The Bureau also noted in the proposal that the proposed minimum font sizes were likely also the maximum sizes that could be used on the short form disclosure to ensure that it will still fit on most packaging material currently used in retail settings. In other acquisition scenarios, when space constraints are not as much of an issue, the Bureau expected that financial institutions would use larger versions of the short form disclosure. For example, when distributing disclosures for payroll card accounts in printed form, financial institutions could use a 8.5x11 inch piece of paper to present a larger version of the short form disclosure, as long as the form maintains the visual hierarchy of the information as reflected in the proposed relative font size requirements. Proposed § 1005.18(b)(4)(ii)(B)(*2*), discussed in more detail below, would have required that the statement disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*10*), and the telephone number and Web site 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 believed that it is particularly important for a consumer to see this information on the short form disclosure, and that making it more prominent than the other textual language on the short form could help to draw consumers' attention to these disclosures.

Comments Received

The Bureau received few comments regarding the proposed prominence and size requirements. A digital wallet provider commented that the prescriptive font size and other format and formatting requirements of the proposed rule would remove the flexibility to shrink or resize disclosures to fit onto mobile screens, resulting in a confusing and frustrating user experience as it would be impossible to view the entire disclosure at once without zooming out to a wider view.[461] A trade association recommended that the Bureau preempt State laws regarding font size where compliance with both the proposed font size and State law would be impracticable, specifically citing a Maryland law requiring a minimum 12-point font for its required payroll card account disclosures that the commenter indicated would make it difficult to fit the short form on one page. A consumer group commenter recommended that the Bureau require larger font size for disclosures provided in non-retail settings. It said that while small print may be unavoidable in retail stores, font size was not similarly constrained in other locations such as Web sites, bank branches, and in

[461] See the section-by-section analysis of § 1005.18(b)(6)(i)(B) above for the Bureau's response to this commenter's concern and other issues relating to electronic disclosures.

settings in which payroll card accounts and government benefit accounts are offered.

The Final Rule

The Bureau is adopting proposed § 1005.18(b)(4)(ii)(A) through (D), renumbered as § 1005.18(b)(7)(ii)(A) through (D), generally as proposed with additional specificity for certain requirements and other modifications as discussed below. The Bureau is also adopting new comments 18(b)(7)(ii)–1 and –2 to provide additional clarification regarding type size requirements in final § 1005.18(b)(7)(ii). See the section-by-section analyses of § 1005.18(b)(7)(ii)(A), (B), (C), and (D) below for prominence and size requirements with respect to typeface and type color generally as well as specific requirements regarding the general short form disclosure, the long form disclosure, and the multiple service plan short form disclosure, respectively.

The Bureau is finalizing the proposed visual hierarchy of information for the short form disclosure created by requiring minimum type sizes in descending order because, as explained in the proposal, this format quickly garners consumers' attention, directing it first to the information the Bureau's research indicates is most important to consumers when selecting a prepaid account. The final rule also retains the actual type size requirements as proposed, with the addition of size requirements for newly-created permissible or required disclosures or those that were unspecified in the proposed rule. The Bureau continues to believe that the size requirements will ensure that consumers can read and understand the disclosures without struggling to see small print while also accommodating the existing packaging constraints for prepaid accounts sold at retail locations. Also, in the final rule, the Bureau has replaced ''font'' size with ''type'' size for clarity, as the term font can refer to both type size and type style. Finally, instead of stating that disclosures must be made in the ''corresponding pixel size'' for electronic disclosures when providing the minimum type size for each element of the disclosures, the final rule includes the actual corresponding pixel size for each type size specified.

The Bureau declines to mandate type size requirements that vary depending on the setting in which consumers receive the pre-acquisition disclosures. As discussed above, the Bureau designed the minimum type sizes requirements for the short form disclosure, that appear in final § 1005.18(b)(7)(ii)(B) and (D), to accommodate the existing packaging constraints related to the sale of prepaid accounts on J-hooks displays in retail locations. Financial institutions are encouraged, but not required, to use larger type sizes when providing pre-acquisition disclosures for prepaid accounts in less space-restrictive settings. For example, financial institutions offering prepaid accounts online, in a bank branch, in the context of payroll card accounts and government benefit accounts, and in other similar circumstances are encouraged to provide the short form disclosure in a type size that exceeds the minimum requirements in the rule to enhance both consumer engagement and comprehension of the prepaid account's terms.

To illustrate this, both the proposed and final model forms for government benefit accounts and payroll card accounts use type sizes that exceed the regulatory minimum. *See* Model Forms A–10(a) and (b). Even when disclosing other information on the same page as the short form disclosure, such as when exercising the option to display State-required information or other fees and discounts on the same page as (but outside) the short form disclosure for these products pursuant to final §§ 1005.15(c)(2)(ii) and 1005.18(b)(2)(xiv)(B), the Bureau believes the required disclosures can exceed the minimum size requirements set forth in the final rule. To that end, new comment 18(b)(7)(ii)–1 explains that a financial institution may provide disclosures in a type size larger than the required minimum to enhance consumer comprehension in any acquisition scenario, as long as the financial institution complies with the type/pixel size hierarchy set forth in final § 1005.18(b)(7)(ii). New comment 18(b)(7)(ii)–2 clarifies that references in final § 1005.18(b)(7)(ii) to ''point'' size correspond to printed disclosures and references to ''pixel'' size correspond to disclosures provided via electronic means.

The Bureau declines to follow the recommendation of an industry commenter that the Bureau preempt certain State law font size requirements that it believes would be impracticable to reconcile with the Bureau's font size requirements. Section 1005.12(b) addresses standards for when inconsistent State law is preempted, but the Bureau does not read the comment to argue that the Bureau's font size requirements are inconsistent with any State law requirements. Moreover, the Bureau notes that financial institutions can provide short form disclosures for payroll accounts in a larger font and on 8.5″ x 11″ or larger paper, as they are not subject to the same space constraints, for example, as are many retail locations.

In addition, as explained in the section-by-section analysis of § 1005.18(b)(7)(iii) below generally regarding State-required information not permitted within the short form disclosure, financial institutions are free to disclose State-required information outside the confines of the short form disclosure, even on the same page as the short form disclosure. In fact, as discussed in the section-by-section analysis of § 1005.18(b)(2)(xiv)(B), the final rule permits inclusion in the short form disclosure of a statement directing the consumer to a particular location outside the short form disclosure for certain information (ways the consumer may access payroll card account funds and balance information for free or for a reduced fee). Financial institutions have the option of providing other State-required information, including information complying with State conspicuousness requirements, in the location referenced in the short form disclosure pursuant to § 1005.18(b)(2)(xiv)(B) or in any other location the financial institution sees fit outside the short form disclosure. Because financial institutions have these options outside the short form disclosure to disclose information required by or otherwise comply with the laws of specific States, the Bureau does not believe either further modification to this final rule nor preemption of State law regarding prominence and size is necessary or appropriate.

18(b)(7)(ii)(A) General

Proposed § 1005.18(b)(4)(ii)(A) would have required that all text used to disclose information pursuant to proposed § 1005.18(b)(2) be in a single, easy-to-read type face. All text included in the tables required to be disclosed pursuant to proposed § 1005.18(b)(3)(iii) must be all black or one color type and printed on a white or other neutral contrasting background whenever practical. The Bureau believed that contrasting colors for the text and the background of the short form and long form disclosures would make it easier for consumers to read the disclosures. The Bureau did not receive any comments on this proposed requirement.

For the reasons set forth herein, and in the absence of comments, the Bureau is adopting proposed § 1005.18(b)(4)(ii)(A), renumbered as § 1005.18(b)(7)(ii)(A), with technical

modifications for conformity and clarity. In addition, for the reasons set forth below, the Bureau is adopting new comment 18(b)(7)(ii)(A)–1.

The final rule requires that all text used to disclose information in the short form or in the long form disclosure pursuant to final § 1005.18(b)(2), (3)(i) and (ii), and (4) be in single, easy-to-read type that is all black or one color and printed on a background that provides a clear contrast. The Bureau has removed the proposed requirement that the background be provided in clear contrast to the type whenever practical because the Bureau does not believe there is a circumstance under which providing a clear contrast would not be practical. As stated in the proposal, 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 and comprehend the disclosure.

New comment 18(b)(7)(ii)(A)–1 explains that a financial institution complies with the color requirements if, for example, it provides the disclosures required by final § 1005.18(b)(2), (3)(i) and (ii), and (4) printed in black type on a white background or white type on a black background. While the Bureau continues to believe that using black/white for the text and a contrasting white/black for the background of the disclosures would provide an ideal presentation, it also recognizes that using other similarly dark colors for text with a neutral background color could also provide clear contrast. For example, as noted in the proposal, the Bureau believes that the statement at the top of the short form disclosure for payroll card accounts required by final § 1005.18(b)(2)(xiv)(A) disclosed in black type on a grey background, if the background of the rest of the short form disclosure is white, could provide a clear contrast that would help alert consumers to that notice. *See, e.g.,* final Model Form A–10(b).

The comment also explains that, pursuant to final § 1005.18(b)(7)(ii)(A), the type and color may differ between the short form disclosure and the long form disclosure provided for a particular prepaid account program. For example, a financial institution may use one font/type style for the short form disclosure for a particular prepaid account program and use a different font/type style for the long form disclosure for that same prepaid account program. Similarly, a financial institution may use black type for the short form disclosure for a particular prepaid account program and use blue type for the long form disclosure for that same prepaid account program.

The Bureau notes that neither final § 1005.18(b)(7)(ii)(A) nor anything else in the final rule specifies the minimum type size or other prominence requirements for the disclosures required outside the short form by final § 1005.18(b)(5).

18(b)(7)(ii)(B) Short Form Disclosure

18(b)(7)(ii)(B)(1) Fees and Other Information

The Bureau's Proposal

Proposed § 1005.18(b)(4)(ii)(B)(*2*) would have required that the fee amounts 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 believed that consumers commonly incur these top-line fees when a financial institution imposes charges for these services. In the Bureau's pre-proposal consumer testing, participants reported that these fee disclosures were the most important to them.[462] The Bureau recognized that a financial institution may not charge all of the fees identified in proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*). For example, a financial institution might not charge any per purchase fees when it imposes a monthly fee. The Bureau, however, still believed 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. The Bureau also proposed that pixel sizes used correspond to the font sizes specified because font sizes can vary when applied in electronic contexts. Though the font sizes may differ, the Bureau explained that 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 proposed in § 1005.18(b)(4)(ii)(B)(*2*) that the 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 for the information required by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*). As discussed in the recap of the proposal above, the Bureau believed that, while these other fees are important for a consumer to know pre-acquisition, the Bureau believed 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*) also would have required that the disclosures required by proposed § 1005.18(b)(2)(i)(B)(*10*) through (*14*) 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 proposed § 1005.18(b)(2)(i)(B)(*5*) through (*9*) (that is, the ATM balance inquiry fees, customer service fee, inactivity fee, incidence-based fees, and the statement regarding overdraft services and other credit features). Additionally, the statement disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*10*), and the telephone number and Web site URL disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*) would have had to be more prominent than the information disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*12*) through (*14*) and (b)(2)(i)(C).

Proposed § 1005.18(b)(4)(ii)(B)(*2*) would have also stated that text used to distinguish each of the two fees that would have been 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 as required by proposed § 1005.18(b)(2)(i)(B)(*7*) 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 information required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*9*) through (*12*). The Bureau believed that this descriptive information was less important than the actual fee information and therefore should be in a smaller font or pixel size.

The Bureau did not receive any comments specifically regarding the prominence and size requirements in proposed § 1005.18(b)(4)(ii)(B)(*2*).

The Final Rule

For the reasons set forth herein, and in the absence of comments opposing the specific prominence and size requirements for the fees and other information in the short form disclosure, the Bureau is adopting proposed § 1005.18(b)(4)(ii)(B)(*2*), renumbered as § 1005.18(b)(7)(ii)(B)(*1*), as proposed with certain modifications. The Bureau is adopting the actual size requirements as proposed, with the

[462] *See* ICF Report I at i.

addition of size requirements that were unspecified in the proposed rule. The Bureau has also replaced the proposed requirement that certain portions of the short form disclosure be more prominent with the more specific requirement that such disclosures appear in bold-faced type to clarify that other methods of illustrating prominence, such as italicized type, would not be deemed compliant. Finally, the Bureau has made technical modifications to the rule for conformity and clarity.

As stated in the proposal and above, the top line of the short form disclosure uses prominence and relative type size to highlight what the Bureau's research indicates are the fees that are most important to consumers when selecting a prepaid account. Thus, the final rule requires that the information required by final § 1005.18(b)(2)(i) through (iv) appear as follows: Fee amounts in bold-faced type; single fee amounts in a minimum type size of 15 points (or 21 pixels); two-tier fee amounts for ATM withdrawal in a minimum type size of 11 points (or 16 pixels) and in no larger a type size than what is used for the single fee amounts; and fee headings in a minimum type size of eight points (or 11 pixels) and in no larger a type size than what is used for the single fee amounts.

Echoing the proposed rule, the next rung of the visual hierarchy for the short form disclosure includes the remaining fees and the statements regarding additional fee types. The Bureau continues to believe that this information, while important, is not as crucial as the top-line information in driving consumer acquisition decisions and, thus, merits disclosure in a relatively smaller type size. Thus, the final rule requires that the information required by final § 1005.18(b)(2)(v) through (ix) appear in a minimum type size of eight points (or 11 pixels) and appear in the same or a smaller type size than what is used for the fee headings required by final § 1005.18(b)(2)(i) through (iv).

As in the proposed rule, the final rung of the visual hierarchy for the short form disclosure includes the statements required by final § 1005.18(b)(2)(x) through (xiii). The Bureau believes that this information, while important, is secondary to the fee information provided in larger type above the statements. Thus, the final rule requires that the information required by final § 1005.18(b)(2)(x) through (xiii) appear in a minimum type size of seven points (or nine pixels) and appear in no larger a type size than what is used for the information required to be disclosed by final § 1005.18(b)(2)(v) through (ix).

While the proposal would have required that certain disclosures in the short form be more prominent than other parts of the disclosure, the final rule specifies that those disclosures appear in bold-faced type. The Bureau believes that the statement regarding the number of additional fee types should be in bold-faced type to alert consumers that the short form does not disclose all fee types that the consumer may incur using that particular prepaid account and to inform them of the total number of additional fee types that could be charged. As discussed in the section-by-section analysis of § 1005.18(b)(2)(viii) above, in the Bureau's post-proposal consumer testing, participants expressed interest in knowing more about these fee types.[463] Relatedly, the Bureau believes it is important to direct consumers to the source from which consumers can learn about these additional fee types and other information about the prepaid account program. The Bureau believes that standardized and consistent use of bold-faced type for elements the Bureau believes merit greater prominence supports the overall goal of the short form disclosure to provide consumers with clear and easy-to-read information that will enhance their prepaid account purchase and use decisions. Therefore, the final rule requires that the statements disclosed pursuant to final § 1005.18(b)(2)(viii)(A) and (x) and the telephone number and Web site URL disclosed pursuant to final § 1005.18(b)(2)(xiii), where applicable, must appear in bold-faced type. For the reasons set forth in the section-by-section analysis of § 1005.18(b)(2)(x) above, the Bureau believes the statement regarding the availability of an overdraft credit feature must stand out to consumers.

Finally, the final rule sets forth the smallest type size requirements for the remaining elements of the short form disclosure, which provide the details of certain fees. The final rule requires that text used to distinguish each of the two-tier fees pursuant to final § 1005.18(b)(2)(iii), (v), (vi), and (ix), to explain that the fee required by final § 1005.18(b)(2)(vi) applies ''per call,'' where applicable, or to explain the conditions that trigger an inactivity fee and that the fee applies monthly, or for the applicable time period, pursuant to final § 1005.18(b)(2)(vii) appear in a minimum type size of six points (or eight pixels) and appear in no larger a type size than what is used for the information required by § 1005.18(b)(2)(x) through (xiii).

18(b)(7)(ii)(B)(2) Variable Fees

Proposed § 1005.18(b)(4)(ii)(B)(*3*) would have required that the explanatory text for variable fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(C), when applicable, must appear in a minimum seven-point font or the corresponding pixel size and appear in no larger the font than what is used for the information required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*5*) through (*8*). The Bureau believed that this explanatory text should be in the same font size as the rest of the textual information included on the short form disclosure.

The Bureau did not receive any comments on the prominence and size requirements for variable fees in proposed § 1005.18(b)(4)(ii)(B)(*3*).

For the reasons set forth herein, and in the absence of comments opposing the specific prominence and size requirements regarding variable fees in the short form disclosure, the Bureau is adopting proposed § 1005.18(b)(4)(ii)(B)(*3*), renumbered as § 1005.18(b)(7)(ii)(B)(*2*), with certain modifications. The Bureau is adopting the actual size requirements for disclosing variable fee as proposed, with the addition of size requirements that were unspecified in the proposed rule. The Bureau has also made technical modifications to the rule to for conformity and clarity.

In keeping with the rationale set forth in the proposed rule, the final rule conforms the size of the explanatory text and symbols for variable fees pursuant to final § 1005.18(b)(3)(i) and (ii) with the type size of the rest of the statements required in the short form disclosure. Thus, the final rule requires that the symbols and corresponding statements regarding variable fees disclosed in the short form pursuant to final § 1005.18(b)(3)(i) and (ii), when applicable, appear in a minimum type size of seven points (or nine pixels) and appear in no larger a type size than what is used for the information required by final § 1005.18(b)(2)(x) through (xiii). A symbol required next to the fee amount pursuant to final § 1005.18(b)(3)(i) and (ii) must appear in the same type size or pixel size as what is used for the corresponding amount.

18(b)(7)(ii)(B)(3) Payroll Card Account Additional Content

Proposed § 1005.18(b)(4)(ii)(B)(*1*) would have provided that the information required by proposed § 1005.18(b)(2)(i)(A) and proposed § 1005.15(c)(2) (that is, the payroll card

[463] *See* ICF Report II at 11.

account and government benefit account banner notices) 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 proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) (that is, the top-line fees in the short form).

The Bureau did not receive any comments regarding the prominence and size requirements in proposed § 1005.18(b)(4)(ii)(B)(*1*).

For the reasons set forth herein, and in the absence of comments opposing the specific prominence and size requirements regarding the payroll card account and government benefit account banner notices in the short form disclosure, the Bureau is adopting proposed § 1005.18(b)(4)(ii)(B)(*1*), renumbered as § 1005.18(b)(7)(ii)(B)(*3*), with certain modifications. The Bureau is adopting the final rule with the addition of size requirements for new § 1005.18(b)(2)(xiv)(B). The Bureau has also made technical modifications to the rule for conformity and clarity. These revisions have been carried through to final § 1005.15(c)(2), the parallel provision addressing additional content requirements in the government benefit account section.

As discussed above, the Bureau continues to believe that the statement regarding wage or salary payment options required in the short form disclosure pursuant to final § 1005.18(b)(2)(xiv)(A) is key information for consumers being offered payroll card accounts to know before they choose whether or not to accept the payroll card account. For this reason, the Bureau believes the type size of the statement should be no larger than, but generally the same size as, the top-line fee headings. Thus, the final rule requires the statement regarding wage or salary payment options for payroll card accounts required by final § 1005.18(b)(2)(xiv)(A), when applicable, appear in a minimum type size of eight points (or 11 pixels) and appear in no larger a type size than what is used for the fee headings required by final § 1005.18(b)(2)(i) through (iv).

Because the new disclosure permitted for payroll card accounts by final § 1005.18(b)(2)(xiv)(B) regarding State-required information and other fee discounts or waivers is a statement similar to and located near the statements required by final § 1005.18(b)(3)(i) and (ii) and those required by final § 1005.18(b)(2)(x) through (xiii), the final rule requires the statement regarding State-required information and other fee discounts and waivers permitted final § 1005.18(b)(2)(xiv)(B) to appear in the same type size used to disclose variable fee information pursuant to final § 1005.18(b)(3)(i) and (ii), or, if none, the same type size used for the information required by final § 1005.18(b)(2)(x) through (xiii).

18(b)(7)(ii)(C) Long Form Disclosure

Proposed § 1005.18(b)(4)(ii)(C) would have provided that the disclosures required by proposed § 1005.18(b)(2)(ii) (that is, the fees and other information in the long form disclosure) must appear in a minimum eight-point font or the corresponding pixel size. The Bureau believed that the long form disclosure, which would list all of a prepaid account's fees, need only appear in a font that is clear enough for consumers to read. The Bureau did not believe any part of the long form disclosure should be more prominent than another part. Thus, the Bureau did not propose any rules regarding the relative font size of information disclosed in the long form.

The Bureau did not receive any comments regarding the prominence and size requirements for the long form disclosure in proposed § 1005.18(b)(4)(ii)(C).

For the reasons set forth in the proposal, and in the absence of comments opposing the prominence and size requirements regarding the long form disclosure, the Bureau is adopting proposed § 1005.18(b)(4)(ii)(C), renumbered as § 1005.18(b)(7)(ii)(C), with technical modifications for conformity and clarity. Final § 1005.18(b)(7)(ii)(C) provides that the long form disclosures required by final § 1005.18(b)(4) must appear in a minimum type size of eight points (or 11 pixels). The final rule does not impose any additional prominence or size requirements for the long form disclosure.

18(b)(7)(ii)(D) Multiple Service Plan Short Form Disclosure

Proposed § 1005.18(b)(4)(ii)(D) would have required 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. Disclosures required by proposed § 1005.18(b)(2)(i)(B)(*10*) through (*14*) must appear in the font sizes set forth in proposed § 1005.18(b)(4)(ii)(B)(*2*).

The Bureau did not receive any comments on the prominence and size requirements for the multiple service plan short form in proposed § 1005.18(b)(4)(ii)(D).

For the reasons set forth below, and in the absence of comments opposing the prominence and size requirements regarding the short form disclosure for multiple service plans, the Bureau is adopting proposed § 1005.18(b)(4)(ii)(D), renumbered as § 1005.18(b)(7)(ii)(D), with certain modifications. The Bureau generally is adopting the size requirements for the multiple service plan short form disclosure as proposed but with additional prominence and size requirements to address the redesigned short form disclosure for multiple service plans and, upon further consideration, to include specifications that were not addressed in the proposed rule. The Bureau has made technical modifications to the rule for conformity and clarity.

The design structure and increased density and complexity of the short form disclosure for multiple service plans, as compared to the general short form disclosure, requires more simplified uniform size requirements. Thus, the final rule requires that, when providing a short form disclosure for multiple service plans pursuant to final § 1005.18(b)(6)(iii)(B)(*2*), the fee headings required by final § 1005.18(b)(2)(i) through (iv) must appear in bold-faced type. With this requirement, the disclosure of these fees will somewhat mimic the focus on the top-line disclosures in the general short form. The information required by final § 1005.18(b)(2)(i) through (xiii) must appear in a minimum type size of seven points (or nine pixels), except the following must appear in a minimum type size of six points (or eight pixels) and appear in no larger a type size than what is used for the information required by final § 1005.18(b)(2)(i) through (xiii): Text used to distinguish each of the two-tier fees required by final § 1005.18(b)(2)(iii) and (v); text used to explain that the fee required by final § 1005.18(b)(2)(vi) applies ''per call,'' where applicable; text used to explain the conditions that trigger an inactivity fee pursuant to final § 1005.18(b)(2)(vii); and text used to distinguish that fees required by § 1005.18(b)(2)(i) and (vii) apply monthly or for the applicable time period.

18(b)(7)(iii) Segregation

The Bureau's Proposal

Proposed § 1005.18(b)(5) would have explained that disclosures that would have been required under § 1005.18(b) that are provided in writing or electronically must be segregated from

everything else and could contain only information that is directly related to the disclosures required under § 1005.18(b). The Bureau believed it was important that only the information it would have required to be disclosed be included on the short form and long form disclosures. The Bureau noted that 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 believed it was important to limit the amount of information permitted in the required disclosures to protect the integrity of their design.

Comments Received

A number of industry commenters, including trade associations and program managers, as well as several employers and a local government agency commented on the proposed segregation provision, recommending that the Bureau eliminate the segregation requirements for payroll card account disclosures to permit inclusion in the short form and long form of State-required information for prepaid accounts. Some commenters said that much of this information could not be feasibly or lawfully disclosed on other parts of the packaging material or online and would require a third disclosure form in addition to the short form and long form disclosures just to disclose State-required information.

The Final Rule

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(5), renumbered as § 1005.18(b)(7)(iii), with technical modifications for conformity and clarity. The Bureau is also adopting new comment 18(b)(7)(iii)–1.

As discussed in the proposal, to preserve the design integrity of the short form and long form disclosures, which the Bureau believes will facilitate consumer engagement and optimal consumer comprehension, it is necessary that the information in these disclosures be restricted to that required or permitted under this final rule. Thus, the final rule requires that the short form and long form disclosures required by final § 1005.18(b)(2) and (4) must be segregated from other information and must contain only information that is required or permitted for those disclosures by final § 1005.18(b).

New comment 18(b)(7)(iii)–1 addresses information permitted outside the short form and long form disclosures. Specifically, the comment explains that the segregation requirement does not prohibit the financial institution from providing information elsewhere on the same page as the short form disclosure, such as the information required by final § 1005.18(b)(5) (that is, the names of the financial institution and prepaid account program and any purchase price or activation fee), additional disclosures required by State law for payroll card accounts, or any other information the financial institution wishes to provide about the prepaid account. Similarly, the comment explains that the segregation requirement does not prohibit a financial institution from providing the long form disclosure on the same page as other disclosures or information, or as part of a larger document, such as the prepaid account agreement, cross-referencing § 1005.18(b)(1) and (f)(1).

Thus, as long as the long form disclosure remains intact and free of extraneous information not required or permitted within its structure, neither the segregation requirement nor any other part of the final rule prohibits disclosure of the long form as part of the cardholder agreement. Thus, the long form may be disclosed as a separate document or may be inserted intact within another document such as the cardholder agreement.

The Bureau declines to exclude payroll card accounts from the segregation requirements of final § 1005.18(b)(7)(iii), as requested by some commenters. The Bureau believes it is necessary to preserve the design integrity of the short form and long form disclosures for all types of prepaid accounts. The Bureau notes that, pursuant to final § 1005.18(b)(4)(ii), all fees and conditions, including those required by State law, must be disclosed in the long form disclosure. Thus, inclusion of State-required information in the long form (with regard to fees and the conditions under which they may be imposed for the prepaid account) would not only *not* violate the segregation requirements of final § 1005.18(b)(7)(iii) but exclusion of this information would violate the requirements of final § 1005.18(b)(4)(ii) to disclose all fees and conditions. The Bureau acknowledges, however, that State laws may have other specific presentation requirements for their disclosures that may not correspond to the final rule's requirements for the long form as set forth in final § 1005.18(b)(4)(ii) and (6)(iii)(A) and thus may necessitate additional disclosure in a format that complies with those requirements.

With regard to the short form disclosure, see the section-by-section analysis of § 1005.18(b)(2)(xiv)(B) above for discussion of how State-required and other fee discounts and waivers may be disclosed in conjunction with the short form disclosure. Pursuant to final § 1005.18(b)(2)(xiv)(B), the final rule permits disclosure in the short form for payroll card accounts (and government benefit accounts pursuant to final § 1005.15(c)(2)(ii)) of a statement directing consumers to State-required information and other fee discounts and waivers, whether this information is located on the same page as (but outside) the short form disclosure or in another location such as the cardholder agreement or on a Web site.

Also, because payroll card accounts (and government benefit accounts) are not provided in retail locations where space may be limited, the Bureau is not persuaded by arguments that State-required information cannot be provided in other ways such as on the same page but outside the short form disclosure, on another portion of the packaging for the prepaid account, or in a package of information accompanying the account.

18(b)(8) Terminology of Pre-Acquisition Disclosures

For the reasons set forth below, the Bureau is adopting the final rule with the addition of § 1005.18(b)(8), which requires that fee names and other terms must be used consistently within and across the disclosures required by final § 1005.18(b). New comment 18(b)(8)–1 provides an example illustrating this requirement. The comment also clarifies that a financial institution may substitute the term prepaid ''account'' for the term prepaid ''card'' as appropriate, wherever it is used in final § 1005.18(b).

A consumer group commenter recommended that the Bureau require uniform terms across disclosures to prevent use of a variety of terminology for certain required fees and information. The Bureau agrees that use of consistent terminology within and across the short form and long form disclosures for a particular prepaid account program will enhance consumer comprehension, and thus is adopting new § 1005.18(b)(8). The Bureau declines to eliminate the ''substantially similar'' requirement for various terms throughout final § 1005.18(b)(2) and replace it with a less flexible standard. Thus, the final rule generally does not require the uniform use of a specific term for particular fees across all short form disclosures. The Bureau believes it can achieve a degree of standardization across short form disclosures that will enhance consumer engagement and comprehension by

requiring that the terms used be substantially similar to the terms set forth in the rule and model forms without mandating universal use of a specific term. Moreover, the Bureau believes the safe harbor afforded to financial institutions using the short form disclosure model forms will encourage financial institutions to use the specific terminology in the model forms where appropriate.

However, as set forth in the comment 18(b)(8)–1, a financial institution may use the terms prepaid ''account'' and prepaid ''card'' interchangeably in the short and long forms, as appropriate. The Bureau is allowing use of these terms because they may be used synonymously in the prepaid context, particularly in light of the terminology used in this final rule, but the Bureau recognizes that in some cases one of the terms may be more apt than the other.

18(b)(9) Prepaid Accounts Acquired in Foreign Languages

The Bureau's Proposal

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.[464] When the Bureau issued its remittance transfer regulation (subpart B of Regulation E), it 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.[465] The Bureau amended Regulation E in this way pursuant to a statutory mandate in section 1073 of the Dodd-Frank Act.

The Bureau proposed to modify the general Regulation E foreign language requirement for prepaid accounts such that proposed § 1005.18(b)(6) would have required 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. Proposed § 1005.18(b)(6) would have also required a financial institution to provide the long form disclosure required 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. Proposed comment 18(b)(6)–1 would have provided several examples as to when financial institutions would have to provide the short form and long form disclosures in a foreign language.

Comments Received

The Bureau received several comments from industry, consumer groups, and one State government agency addressing this aspect of the proposal. Specifically, the consumer groups and the State government agency generally supported requiring financial institutions to provide pre-acquisition disclosures in the foreign language the financial institution uses in connection with the acquisition of a prepaid account. Some of these commenters argued that, if financial institutions market prepaid accounts in a foreign language, or otherwise reach out to non- and limited-English speaking consumers, they should also be required to provide the disclosures in that language. One commenter urged the Bureau to require financial institutions to provide disclosures in commonly spoken languages. Another commenter explained that providing disclosures in a consumer's preferred language gives non- and limited-English speaking families accurate information regarding their prepaid accounts and creates an inclusive culture that consumers seek when making financial decisions. Another commenter requested that the Bureau extend this requirement to all required disclosures, not just the pre-acquisition disclosures.

Some of the consumer groups urged the Bureau to further expand the proposed foreign language requirements to require foreign language support for live customer service calls in any language the financial institution uses in connection with the marketing or acquisition of a prepaid account. Some commenters stated that customer service representatives (and interpreters) should be both fluent in the spoken language and knowledgeable about prepaid accounts to ensure that communication with non- and limited-English speaking consumers is as effective as communication with other consumers. One commenter explained that deploying a customer service representative (or an interpreter) that does not have the necessary expertise can result in the dissemination of inaccurate information. Other commenters stated that customer service calls in foreign languages also enable non- and limited-English speaking consumers to obtain account balances, request transaction information, access general account information, and exercise dispute rights. See the section-by-section analysis of § 1005.18(c)(1) for a discussion of the comments received on foreign language support for customer service calls as it relates to accessing account information.

Two industry trade associations and a coalition of prepaid account issuers agreed that, where a financial institution engages in a deliberate marketing program to solicit consumers in a foreign language, it may be reasonable to require disclosures in that same language. One of the commenters explained that, in those situations, financial institutions control the languages used in the marketing programs and can determine whether it makes business sense to develop and implement disclosures in a particular language.

The Bureau received several comments from industry, including from industry trade associations, and a law firm writing on behalf of a coalition of prepaid issuers, arguing, however, that the foreign language disclosure requirement, as proposed, would discourage financial institutions from servicing non- and limited-English speaking consumers in their preferred languages, especially at branch locations and call centers. Several commenters argued that the ''by telephone'' and ''in person'' components of the proposed requirement could actually be detrimental to consumers because employees of a financial institution would be prohibited from engaging with them in their preferred languages if the financial institution did not have pre-acquisition disclosures available in those languages. These commenters stated that the proposed requirement would also undermine financial institutions' efforts to service communities with a high number of non- and limited-English speaking consumers (by hiring staff with specific language abilities and establishing branches and offices in those areas), which they stated is generally supported by other bank regulators. Several commenters urged the Bureau to apply instead the current foreign language disclosure requirements under Regulation E to prepaid accounts.[466] However, these commenters requested

[464] § 1005.4(a)(2).

[465] ICF Report II at 11.

[466] As discussed above, 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).

that, if the Bureau proceeds with the proposed requirement, the term ''principally uses a foreign language'' not cover certain situations, such as responses to consumer-initiated inquiries; interactions with consumers through the use of an interpreter; and interactions where the financial institution knows, based on a prior relationship or interaction, that the consumer prefers a language other than English.

These industry commenters argued that the requirement as proposed would also impose significant compliance burdens on financial institutions. These commenters explained that financial institutions would need to train their employees to speak only in English, or in the specific languages for which pre-acquisition disclosures are available, if the topic of prepaid accounts comes up while assisting consumers. These commenters stated that customer service interactions that are in person or over the telephone could implicate hundreds of languages, thereby making compliance with the proposed requirements virtually impossible. These commenters further stated that financial institutions cannot always control the languages spoken at a retail setting, by a program manager, or even at branch locations. In addition, these commenters stated that financial institutions cannot ensure that third-party providers, such as employers and government agencies, will comply with the requirement because financial institutions might not know whether a language other than English is spoken at the time of acquisition.

One industry commenter urged the Bureau not to require financial institutions to provide the long form disclosure in English upon request in addition to providing the disclosures in a foreign language, as it did not believe it would be necessary or customary to do so.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing proposed § 1005.18(b)(6), renumbered as § 1005.18(b)(9), pursuant to its authority under EFTA sections 904(a) and (c), 905(a), and section 1032(a) of the Dodd-Frank Act, with several modifications explained below. The Bureau believes that certain foreign language disclosures are 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, consistent with section 1032(a) of the Dodd-Frank Act, the foreign language disclosures will 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.

Final § 1005.18(b)(9)(i) sets forth the general foreign language disclosure requirements for prepaid accounts. Specifically, it requires a financial institution to provide the pre-acquisition disclosures required by § 1005.18(b) in a foreign language, if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in the following circumstances: (1) The financial institution principally uses a foreign language on prepaid account packaging material; (2) the financial institution principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically; or (3) the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language.

The Bureau is finalizing in § 1005.18(b)(9)(i) the general requirement from the proposal that a financial institution must provide the pre-acquisition disclosures in a foreign language, if the financial institution principally uses that foreign language on prepaid account packaging material, by telephone, or on the Web site a consumer uses to acquire a prepaid account. The Bureau is clarifying in final § 1005.18(b)(9)(i) that the requirement to provide the pre-acquisition disclosures in a foreign language applies only in connection with the acquisition of a prepaid account. In addition, the Bureau has replaced the phrase ''on the Web site'' with ''electronically'' in final § 1005.18(b)(9)(i) to more clearly cover all situations in which a consumer can electronically acquire a prepaid account, such as by clicking on a link provided by the financial institution on an advertisement accessed on a mobile device, for example. The Bureau continues to believe that if a financial institution provides a way for a consumer to acquire a prepaid account in a foreign language, the financial institution is making a deliberate effort to obtain the consumer's business and therefore should be required to provide the pre-acquisition disclosures in that foreign language. The Bureau also believes that if a financial institution principally uses a foreign language on the interface that a consumer sees or uses to initiate the process of acquiring a prepaid account, the consumer should receive pre-acquisition disclosures in that foreign language to ensure they are able to understand the required disclosures.

However, the Bureau has removed from final § 1005.18(b)(9)(i) the proposed requirement to provide the pre-acquisition disclosures in a foreign language if the financial institution principally uses that foreign language in person, as requested by several commenters. The Bureau agrees with commenters that servicing non- and limited-English speaking consumers in their preferred language is critical and would not want to discourage employees of financial institutions at branch locations from using their foreign language abilities to assist these consumers. Similarly, the Bureau understands the importance of servicing communities with a high number of non- and limited-English speaking consumers and does not seek to stifle efforts made by financial institutions to reach out to these communities.[467] In addition, the Bureau understands that financial institutions cannot always know or control the languages that are spoken at branch locations or in other in-person environments (particularly when those locations are operated by third parties), and that providing disclosures in every possible language their employees speak might not be feasible. The Bureau believes that by not including the in-person trigger in final § 1005.18(b)(9)(i), financial institutions will be able to better comply with this requirement while not discouraging them from servicing non- and limited-English speaking consumers.

The Bureau has added a trigger for when a financial institution principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material for the consumer to acquire a prepaid account by telephone or electronically, in response to the comments it received. The Bureau agrees with commenters that if a financial institution deliberately targets consumers by advertising, soliciting, or marketing to them in a foreign language, the financial institution should be required to provide the pre-acquisition disclosures in that same language. The Bureau

[467] *See* CFPB's Financial Education Programs Serving Immigrant Populations (July 2016), *available at http://www.consumerfinance.gov/data-research/research-reports/financial-education-programs-serving-immigrant-populations/.*

believes it is particularly important to require financial institutions to provide the disclosures in a foreign language, if in addition to deliberately targeting consumers, financial institutions use those same communications to drive consumers to a specific telephone number or Web site to acquire a prepaid account.

Final § 1005.18(b)(9)(ii) provides that a financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to final § 1005.18(b)(9)(i) must also provide the information required to be disclosed in its pre-acquisition long form disclosure pursuant to § 1005.18(b)(4) in English upon a consumer's request and on any part of the Web site where it discloses this information in a foreign language. The Bureau believes that the ability to obtain the long form disclosure information in English will be beneficial to consumers in various situations, such as when a family member is assisting a non-English speaking consumer to manage his prepaid account but only reads English. Further, this requirement is consistent with existing § 1005.4(a)(2), which requires that disclosures made under Regulation E in a language other than English be made available in English upon the customer's request. The Bureau has observed that many financial institutions that offer prepaid accounts in a foreign language already provide the pre-acquisition disclosures and the initial disclosures in both English and the foreign language without a request from the consumer, which the Bureau believes is beneficial for consumers. The Bureau has also revised the internal paragraph references within final § 1005.18(b)(9) and related commentary to conform to numbering changes in this final rule and has made other technical revisions for organizational purposes.

The Bureau is finalizing proposed comment 18(b)(6)–1, renumbered as comment 18(b)(9)–1, with examples that reflect the changes to § 1005.18(b)(9)(i) and that illustrate situations in which a financial institution must provide the pre-acquisition disclosures in a foreign language and situations in which it is not required to provide the disclosures.

The Bureau is adopting new comment 18(b)(9)–2 to clarify when a foreign language is principally used. This comment explains that all relevant facts and circumstances determine whether a foreign language is principally used by the financial institution to advertise, solicit, or market under final § 1005.18(b)(9). Whether a foreign language is principally used is determined at the packaging material, advertisement, solicitation, or marketing communication level, not at the prepaid account program level or across the financial institution's activities as a whole. A financial institution that advertises a prepaid account program in multiple languages would evaluate its use of foreign language in each advertisement to determine whether it has principally used a foreign language therein.

The Bureau is adopting new comment 18(b)(9)–3 to explain the term ''advertise, solicit, or market.'' This comment clarifies that any commercial message, appearing in any medium, that promotes directly or indirectly the availability of prepaid accounts constitutes advertising, soliciting, or marketing for purposes of § 1005.18(b)(9). This comment also provides examples illustrating advertising, soliciting, and marketing. The Bureau notes that advertising, soliciting, and marketing could include, for example, outreach via social media. New comment 18(b)(9)–3 resembles comment 31(g)(1)–2, which corresponds to the foreign language disclosure requirements for remittance transfers in § 1005.31(g)(1). However, new comment 18(b)(9)–3 has been altered to accommodate for the differences between how consumers acquire prepaid accounts and how they initiate remittance transfers. For example, the Bureau did not include in new comment 18(b)(9)–3 specific examples from comment 31(g)(1)–2 related to advertisements, solicitations, and marketing communications at an office because scenarios at an office do not usually apply in the prepaid account context.[468] In addition, the Bureau believes that leaving these examples out of new comment 18(b)(9)–3 avoids confusion related to the proposed in person trigger that was removed from this final rule. Thus, final § 1005.18(b)(9) would not apply to general advertisements, solicitations, and marketing communications that are in a foreign language and displayed at a retail or branch location that do not meet any of the triggers in § 1005.18(b)(9)(i)(A) through (C).

The Bureau is adopting new comment 18(b)(9)–4 to explain the requirements in final § 1005.18(b)(9)(ii), which states that a financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to § 1005.18(b)(9)(i) must also provide the information required to be disclosed in its pre-acquisition long form disclosure pursuant to § 1005.18(b)(4) in English upon a consumer's request and on any part of the Web site where it discloses this information in a foreign language. New comment 18(b)(9)–4 clarifies that a financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to § 1005.18(b)(9)(i) may, but is not required to, provide the English version of the pre-acquisition long form disclosure information required by final § 1005.18(b)(4) in accordance with the formatting, grouping, size and other requirements set forth in final § 1005.18(b) for the long form disclosure.

The Bureau declines to implement at this time other suggestions made by several commenters, which include requiring foreign language support for customer service calls; requiring customer service representatives and interpreters to be both fluent in a foreign language and knowledgeable about prepaid accounts; and requiring all disclosures, not just pre-acquisition disclosures, to be provided in a foreign language. The Bureau believes these measures are beyond the scope of this rulemaking and therefore declines to adopt them now. The Bureau is also concerned that imposing additional requirements in this final rule would discourage financial institutions from servicing non- or limited-English speaking consumers and from offering prepaid accounts in foreign languages. The Bureau understands that the costs associated with such requirements involve hiring and retaining trained personnel fluent in other languages, which may be cost prohibitive for many financial institutions. In addition, the Bureau has focused on the pre-acquisition disclosures because it believes that they present a reasonable and appropriate step forward focusing on the most important information at the stage that the consumer is acquiring the prepaid account. But for the reasons discussed above, the Bureau declines to insert additional requirements in this final rule.

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 EFT. Section 1005.9(b), which implements EFTA section 906(c), generally requires a periodic statement for each monthly cycle in which an EFT occurred or, if there are no such transfers, a periodic

[468] These examples include announcements in a foreign language on a public address system at an office; printed material in a foreign language on any exterior or interior sign at an office; and point-of-sale displays in a foreign language at an office. *See* comment 31(g)(1)–2.

statement at least quarterly.[469] 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.[470]

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 § 1005.18(b), financial institutions can provide for payroll card accounts 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)).

As discussed below, the Bureau proposed § 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 electronic account transaction history, and at least 18 months written account transaction history upon request. Proposed § 1005.18(c)(3) would have required financial institutions to disclose all fees assessed against the account, in any electronic or written account transaction histories and on periodic statements. In addition, the Bureau proposed in § 1005.18(c)(4) to require financial institutions to disclose, in any electronic or written account transaction histories and on periodic statements, monthly and annual summary totals of the amount of all fees imposed on the prepaid account, and the total amounts of deposits to and debits from the prepaid account.

As discussed in detail in the section-by-section analyses that follow, the Bureau is finalizing § 1005.18(c) generally as proposed with several modifications. Specifically, final § 1005.18(c)(1) requires 12 months of electronic account transaction history and 24 months of written account transaction history instead of 18 months for both. The Bureau is also adopting new § 1005.18(c)(2) to provide a modified version of the periodic statement alternative for prepaid accounts when a consumer's identity cannot be or has not been verified by the financial institution. Furthermore, the Bureau is finalizing proposed § 1005.18(c)(2), renumbered as § 1005.18(c)(3), as proposed to require that the history of electronic and written account transactions include the information set forth in § 1005.9(b), which lists the various items that must be included in a periodic statement, such as detailed transaction information and fees assessed. In addition, the Bureau is finalizing proposed § 1005.18(c)(3), renumbered as § 1005.18(c)(4), generally as proposed to require a financial institution to disclose the amount of any fees assessed against the account, whether for EFTs or otherwise, on any periodic statement provided pursuant to § 1005.9(b) and on any history of account transactions provided or made available by the financial institution. Finally, the Bureau has modified proposed § 1005.18(c)(4), renumbered as § 1005.18(c)(5), to require financial institutions to provide the summary totals of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date; the Bureau is not finalizing the proposed requirement that financial institutions provide summary totals of all deposits to and debits from a consumer's prepaid account.

18(c)(1) Periodic Statement Alternative

Periodic Statement Requirement Generally

The Bureau's Proposal

As discussed above, existing § 1005.18(b) states that 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)). The Bureau proposed to extend this alternative to all prepaid accounts, with certain modifications, as described in the section-by-section analyses of § 1005.18(c)(1)(i) through (iii) below.

Comments Received

The Bureau received a number of comments regarding whether the Regulation E periodic statement requirement should be applied to prepaid accounts. Many consumer groups supported such a requirement, arguing that the periodic statement is an important tool for managing consumer finances, as consumers use information about their account usage when making financial decisions. One commenter also argued that receiving periodic statements encourages consumers to monitor their accounts on a regular basis for errors and unauthorized transactions. Another commenter requested that the Bureau require financial institutions to provide annual statements for record-keeping and tax-preparation purposes.

Several of these commenters and one State government agency argued that consumers should have the option to sign up for paper periodic statements for free or a nominal fee, instead of having to call each time to make a request—taking up customer service resources and possibly incurring a fee. These commenters argued that periodic statements in paper form are essential for recordkeeping purposes, especially for older consumers and consumers with no internet or electronic access. These commenters also argued that paper periodic statements are more convenient and easier to review for consumers who find it difficult to remember passwords or log into their online accounts, or for consumers who simply prefer paper over electronic statements. One commenter stated that a myriad of regulations, laws, and court procedures necessitate the continued availability of paper periodic statements and noted several circumstances in which it believed paper statements are necessary.

Conversely, some industry commenters, including issuing banks, credit unions, and a credit union trade association, argued that periodic statements should not be required for prepaid accounts, considering the lifespan of a prepaid account is usually very short. One commenter added that statements would not make sense particularly for non-reloadable, low-value prepaid accounts, as these products are anonymous and do not have the functionality or associated fees of reloadable prepaid accounts, deposit

[469] 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).

[470] *See* §§ 1005.4(a)(1) and 1005.9(b).

accounts, or other traditional bank accounts. Some commenters argued that a periodic statement requirement would impose unnecessary costs and recordkeeping burdens and provide consumers little value, as they prefer immediate, electronic access to their account information and transaction history. Regarding the form and content of the periodic statement, a few credit union trade associations requested a model form, and an issuing bank requested clarification regarding the information that would be required on the statement.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the portion of the proposal that extends the Regulation E periodic statement requirement to prepaid accounts. As stated above, the requirement to provide consumers with a periodic statement for each account that may be accessed by means of an EFT is required by EFTA section 906(c), and the Bureau does not believe it would be appropriate to completely exempt prepaid accounts from this requirement. The Bureau also recognizes that access to account information—whether through a periodic statement or the periodic statement alternative pursuant to final § 1005.18(c)(1) discussed below—is essential for consumers to manage their prepaid accounts and to monitor account transactions and fees on a regular basis.

The Bureau declines to require financial institutions to provide periodic statements in paper form, as requested by several commenters. The Bureau notes that § 1005.4(a)(1) allows disclosures, including periodic statements, required by Regulation E to be provided to the consumer in electronic form, subject to compliance with the consumer-consent and other applicable provisions of the E-Sign Act.[471] The Bureau does not believe it is necessary or appropriate at this time to mandate paper statements for prepaid accounts. Regarding one commenter's request for an annual statement, the Bureau believes consumers will have sufficient access to account information through periodic statements pursuant to § 1005.9(b) or through electronic and written account transaction histories pursuant to the periodic statement alternative in final § 1005.18(c)(1).

The Bureau does not believe it is necessary to provide additional information or guidance about the form and content of the periodic statement, as requested by some commenters. Because prepaid accounts are subject to Regulation E by virtue of this final rule, the requirements for periodic statements set forth in § 1005.9(b), as well as the general disclosure requirements in § 1005.4, apply to prepaid accounts.[472] The Bureau reminds financial institutions that the requirement in final § 1005.18(c)(5) to display the summary totals of fees for the prior calendar month and the calendar year to date applies to financial institutions providing periodic statements as well as those following the alternative, as discussed below. The requirement to provide a periodic statement under Regulation E is separate from the requirement under final Regulation Z § 1026.7(b) with respect to a covered separate credit feature that is accessible by a hybrid prepaid-credit card. See the section-by-section analyses of Regulation Z §§ 1026.6 and 1026.7(b) for additional information regarding the Regulation Z periodic statement requirement.

Periodic Statement Alternative Generally

Comments Received

The Bureau received several comments addressing the periodic statement alternative generally. Several consumer groups, a State government agency, industry trade associations, and a few credit unions supported the proposal, arguing that the alternative would benefit consumers and impose little to no additional burden on industry. These commenters explained that the requirements to provide account information by telephone and online are consistent with consumer preference. These commenters further stated that the alternative would impose no additional costs and burden for financial institutions that currently provide periodic statements. One of the consumer groups urged the Bureau to require all financial institutions to provide access to account information as would be required under the proposed alternative, even if financial institutions provide periodic statements pursuant to § 1005.9(b).

Conversely, several industry commenters, including credit union trade associations, a credit union, and a think tank, argued that the proposed alternative would provide no relief to financial institutions and could in fact be equally or more costly and burdensome than providing periodic statements, leaving financial institutions—particularly credit unions—with few options. These commenters explained that financial institutions that do not have the proper infrastructure in place to meet the requirements of the alternative would need to invest in system upgrades and Web site development and coordinate with third-party data processors to obtain the information needed to provide periodic statements or account transaction history. Several of the credit union trade associations explained that most credit unions rely on third parties to maintain their Web sites and to provide the data for account transaction history; therefore, reliance on the third parties to capture the required information and to make necessary changes would require industry-wide coordination and may result in higher fees. Several other credit union trade associations argued that the proposed alternative would not be appropriate for prepaid accounts because prepaid accounts are generally seen as short-term or disposable products, and the consumer relationship typically lasts as long as there are funds available on the account. Relatedly, one think tank argued that government agencies would find it difficult to manage beneficiaries' account transaction histories for 18 months.

The Final Rule

For the reasons discussed herein, the Bureau is finalizing § 1005.18(c)(1) generally as proposed, with certain modifications as discussed below. 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 create an exception to the periodic statement requirements of EFTA section 906(c), because the periodic statement alternative will assist consumers' understanding of their prepaid account activity.

The Bureau believes the periodic statement alternative adopted by the Board for payroll card accounts, with the modifications discussed below, is appropriate to extend to all prepaid accounts. The Bureau proposed to adopt the periodic statement alternative for prepaid accounts, which was based on the on the alternative under the Payroll Card Rule, to reduce some of the burden financial institutions would have otherwise experienced if required to provide periodic statements for prepaid accounts. The Bureau believes that the alternative it is adopting not only helps reduce costs, but also strikes the

[471] 15 U.S.C. 7001 *et seq.*

[472] As discussed below, final § 1005.18(c)(3) requires that electronic and written account transaction histories under the periodic statement alternative include all of the information set forth in § 1005.9(b).

appropriate balance between providing consumers with access to their account information and not unnecessarily burdening financial institutions. Specifically, financial institutions that wish to provide periodic statements may do so (either on paper or electronically with E-Sign consent [473]), while financial institutions that find such an approach problematic or undesirable—because of the cost, burden, or otherwise—may instead follow the alternative. Regardless of which option a financial institution chooses, consumers will have access to account information either by virtue of a periodic statement or through the methods required under the alternative (that is, account balance by telephone, electronic account transaction history, and written account transaction history upon request).

The Bureau does not expect the alternative to be particularly burdensome for most financial institutions. As noted in the Bureau's Study of Prepaid Account Agreements and other public studies, many financial institutions already follow the existing alternative from the Payroll Card Rule.[474] Because consumers need reliable access to account information to manage their prepaid accounts and to assist them when making financial decisions generally, the Bureau believes it is appropriate to require that financial institutions must either provide a periodic statement or follow the alternative. Reliable access to account information is especially important since prepaid accounts have become more prevalent in recent years and are increasingly being used as replacements for traditional checking accounts; that is, they are no longer universally seen or used as short-term or disposable products. Regarding commenters' concerns about the costs and burden associated with the alternative, the Bureau believes the modifications it has made to the length of time electronic and written account transaction histories must cover, as discussed below, will help alleviate those concerns.

The Bureau declines to require all financial institutions to provide access to account information as required under the alternative, even if they provide periodic statements, as requested by a commenter, as it does not believe it to be necessary or appropriate to do so at this time. As discussed above, the Bureau proposed to adopt the periodic statement alternative for prepaid accounts in order to reduce some of the burden financial institutions experience with regard to mailing periodic statements. Requiring a financial institution to provide access to account information pursuant to the alternative, despite its election to provide periodic statements, would contradict the intended purpose of the alternative.

Other Methods of Access to Account Information

Comments Received

The Bureau sought comment on the methods of access consumers need to their account information and on other alternatives to the Payroll Card Rule's approach regarding access to account information. The Bureau received several industry and consumer group comments in response to this request. All of these commenters generally supported the idea that consumers should have access to their prepaid account information. However, commenters were divided on whether the Bureau should require other methods of access—in addition to the periodic statement requirement pursuant to § 1005.9(b) and the periodic statement alternative provided by final § 1005.18(c)(1)—and whether such access should be provided at no cost to the consumer.

Several consumer groups urged the Bureau to require free text message and email alerts and free access to customer service, arguing that these methods are essential tools for consumers to successfully manage their accounts. These commenters argued that imposing fees to access account information discourages consumers, especially those experiencing financial hardship, from monitoring transactions and exercising their error resolution rights under Regulation E. These commenters explained that text messages and email alerts provide a quick and easy way for consumers to be notified about low account balances and transactions made. One commenter stated that offering text message updates available at no charge can help consumers that have limited internet access and also assist financial institutions in identifying fraud and other unauthorized transactions more quickly. In addition, these commenters explained that consumers need access to customer service for a variety of reasons, such as to ask questions, check balances, dispute charges, and verify the receipt of wages and other transactions. Several commenters requested that the Bureau require foreign language support for customer service calls, particularly if a financial institution uses a foreign language in connection with the marketing or acquisition of a prepaid account.

On the other hand, industry commenters argued against a requirement to provide other methods of access for account information at no cost to the consumer. These commenters stated that text message and email alerts should be optional, so that financial institutions can determine the needs of their customers without unnecessary restrictions. These commenters also stated that providing various methods of access to account information can be costly to industry and therefore financial institutions should be permitted to charge consumers reasonable fees for certain methods of access.

The Final Rule

The Bureau has considered the above comments and declines to require financial institutions to provide other methods of access to account information at this time. The Bureau is concerned that requiring financial institutions to provide free text message and email alerts and free access to customer service could increase technological and operational costs and burdens, including the hiring and training of additional customer service personnel. The Bureau also believes that financial institutions can assess the methods of access that best meet the needs of their customers. For example, the Bureau is aware that many financial institutions already provide free text message and email alerts and access to customer service, as the competitive nature of the industry is moving financial institutions to offer these services.[475] However, the Bureau

[473] *See* § 1005.4(a)(1).

[474] See Study of Prepaid Account Agreements at 18 tbl.5. 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; 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)); 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. *See id.* at 19 tbl.6 and 21 tbl.8. *See also* Ctr. for Fin. Services Innovation, *2016 Prepaid Industry Scorecard: Assessing Quality in the Prepaid Industry with CFSI's Compass Principles,* at 4 (Mar. 2016), *available at http://www.cfsinnovation.com/Document-Library/2016-Prepaid-Scorecard* (2016 CFSI Scorecard); 2014 Pew Study at 19–20.

[475] The CFSI found that 60 percent of the prepaid market sampled (11 of 22 cards) allows users to customize alerts (compared to 30 percent of the market sampled (7 of 18 cards) in 2014). The CFSI noted that 11 cards allow cardholders to set a ''low balance'' threshold and receive an email or text

Continued

believes that the periodic statement requirement of § 1005.9(b) or the periodic statement alternative in final § 1005.18(c)(1) is sufficient at this time to ensure that all prepaid consumers have access to their account information.

Regarding commenters' request that the Bureau require financial institutions to provide foreign language support for customer service, the Bureau does not believe such a requirement is necessary or appropriate at this time. The Bureau understands that financial institutions that market prepaid accounts in foreign languages generally offer customer service support in those languages and that some offer foreign language customer service support, particularly in Spanish, even if they do not engage in foreign language marketing. However, the Bureau has concerns about the costs and burdens to industry, if it were to formalize such a requirement in this final rule. While consumers will have the right to obtain, in certain situations, pre-acquisition disclosures in a foreign language pursuant to final § 1005.18(b)(9), the Bureau is concerned that a foreign-language customer-service requirement here could deter financial institutions from offering prepaid accounts in foreign languages because financial institutions would have to ensure, among other things, that live customer service in a foreign language is available at all times. However, the Bureau will continue to monitor industry practice in this area and may revisit this issue in a future rulemaking.

18(c)(1)(i)

The Bureau's Proposal

As noted above, under the Payroll Card Rule, a financial institution is not required to furnish periodic statements pursuant to § 1005.9(b) if it instead follows the periodic statement alternative for payroll card accounts in existing § 1005.18(b)(1). Existing § 1005.18(b)(1)(i) requires a financial institution to provide access to the consumer's account balance through a readily available telephone line. The Bureau proposed to extend this requirement as proposed § 1005.18(c)(1)(i) to all prepaid accounts.

As discussed in the section-by-section analysis of § 1005.15(d)(1)(i) above, the periodic statement alternative for government benefit accounts 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 EFT). The Bureau sought 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. The Bureau also requested 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 and for parity with proposed § 1005.18.

Comments Received

A number of commenters, including consumer groups, an office of a State Attorney General, a State government agency, and a credit union, supported the proposal to extend to prepaid accounts the first part of the periodic statement alternative to provide access to a consumer's account balance through a readily available telephone line. In addition, these commenters, as well as several labor organizations, urged the Bureau to require free access to balance information at a terminal for all prepaid accounts. They explained that terminals are convenient and easy to use, especially for non-English speakers and consumers who have difficulty navigating an automated menu over the telephone. These commenters also noted that terminals provide account balances in real-time and are valuable to consumers with limited telephone and internet access.

Several consumer groups also argued that imposing fees to access balance information at a terminal discourages consumers, especially those experiencing financial hardship, from monitoring transactions and exercising their error resolution rights under Regulation E. These commenters noted that paying for such access is especially difficult for consumers who are already experiencing financial hardship and that consumers generally do not expect to be charged for checking their balance information. They suggested that the cost of providing balance information at a terminal is minimal and should be bundled with the cost of withdrawals. However, one program manager challenged this point, arguing that access to balance information at a terminal is the most expensive method to check account balances because these transactions would likely generate a cost to merchants and networks that would likely then be assessed back to financial institutions. Another program manager urged the Bureau not to require access to balance information at a terminal given the costs to industry, and a credit union specifically requested that financial institutions not be required to provide access to balance information by both telephone and at a terminal.

One industry commenter requested that the Bureau allow online access to a digital wallet account balance as an alternative to providing access via a readily accessible telephone line. This commenter explained that consumers who use digital wallets must have a means to access their accounts electronically, and that digital wallet providers use email and other electronic communications as the primary way to provide information to consumers. This commenter further explained that, given the relationship between the consumer and the digital wallet provider, it does not believe consumers of such products wish to check their account balance via telephone.

The Final Rule

For the reasons discussed herein, the Bureau is finalizing § 1005.18(c)(1)(i) as proposed. The Bureau believes that, as part of the periodic statement alternative, access to balance information is essential for consumers to use and manage their accounts, The Bureau understands that providing such access through a readily available telephone line is a common method of doing so. In addition, the Bureau believes that most financial institutions already provide balance information by telephone. Notwithstanding the consumer benefits of accessing balance information at a terminal, the Bureau does not believe that requiring such access for all prepaid accounts justifies the additional costs to industry at this time, given that consumers can obtain balance information through other, less expensive methods. The Bureau also declines to exempt digital wallets that are prepaid accounts from the requirement to provide balance information by telephone under the periodic statement alternative, as requested by one commenter, because balance information should be accessible by telephone in the event online access to such information is unavailable.

As explained in the proposal, the Bureau expects that a readily available telephone line for providing balance information be a local or toll-free telephone line that, at a minimum, is available during standard business hours. Further, the Bureau expects that, in most cases, financial institutions would provide 24-hour access to

alert when their balance falls below that threshold. Five cards also allow users to select notifications of transactions or withdrawals over a certain dollar amount. *See* 2016 CFSI Scorecard at 2, 9. *See also* 2014 Pew Study at 19–20.

balance information through an automated line, which would ensure that consumers could access balance information at their convenience. The Bureau reminds financial institutions that neither they nor their service providers are permitted to charge consumers a fee for accessing balance information by telephone, when providing that information as part of the periodic statement alternative pursuant to final § 1005.18(c)(1)(i).

18(c)(1)(ii) and 18(c)(1)(iii)

The Bureau's Proposal

Existing § 1005.18(b)(1)(ii) requires financial institutions to provide an electronic history of the consumer's payroll card account transactions, such as through a Web site, that covers at least 60 days preceding the date the consumer electronically accesses the account.

The Bureau proposed to extend this existing requirement in § 1005.18(b)(1)(ii) to prepaid accounts in proposed § 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 proposed to extend this time period because it believed 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 believed that a consumer may realize during any given year that he or she needs financial records from the prior calendar year and that access to 18 months of prepaid account history would give the consumer six months into the next calendar year. In addition, based on pre-proposal outreach to prepaid account providers and publicly available studies, the Bureau believed 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 would be minimal.

Existing § 1005.18(b)(1)(iii) requires financial institutions to provide a written history of the consumer's payroll card account transactions promptly in response to an oral or written request, that covers at least 60 days preceding the date the financial institution receives the consumer's request. Similar to the requirement to provide electronic account transaction history, the Bureau proposed to extend this requirement to all prepaid accounts in 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. The Bureau also proposed to extend to all prepaid accounts existing comment 18(b)–1, which requires that the account transactions histories provided under existing § 1005.18(b)(1)(ii) and (iii) reflect transactions once they have been posted to the account, renumbered as proposed comment 18(c)–1. In addition, the Bureau also proposed to extend to all prepaid accounts existing comment 18(b)–2 regarding retainability of electronic account history renumbered as proposed comment 18(c)–2.

The Bureau recognized that in certain situations, consumers' requests for written account information may exceed what would be required under the proposal; therefore, the Bureau proposed to clarify in proposed 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 have included 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.

Proposed comment 18(c)–4 would have explained 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 the request is received. In addition, this comment would have explained that when a prepaid account has been closed or inactive for 18 months, the financial institution is no longer required to make any account or transaction information available. The proposed comment would have referenced 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.

Comments Received

The Bureau received many comments requesting that it modify the time period that must be covered in a consumer's electronic and written account transaction history. Most consumer groups supported the Bureau's proposal to provide at least 18 months of account transaction history, noting the consumer benefits of having a longer time period and arguing that the impact on industry should be minimal because data storage costs continue to decrease and consumers rarely request copies of their account transaction history. These commenters also argued that—contrary to the Bureau's proposal—financial institutions should not be permitted to charge a fee for providing written account transaction history that is older than the required time period, arguing that it should not cost more to print and mail older information than it is to print and mail newer information.

A few consumer groups argued, however, that a 24-month time period would be more appropriate than 18 months because consumers could identify seasonal patterns, and October 15 tax filers could access transactions earlier than March 15 of the previous year. One of these commenters explained that it could take months for unauthorized transactions to be recognized and months or years to complete fraud investigations and resolve disputes with third parties. This commenter also stated that 24 months would allow consumers to access a longer period of account history, which would be particularly helpful to consumers who are unable to print or save transaction history on a regular basis. These commenters also requested that written account transaction histories go back at least seven years, which they said would be consistent with some document retention policies, so that consumers who use prepaid accounts as primary transaction accounts could look up older charges in the event of a tax audit or when applying for a mortgage.

A number of industry commenters, including issuing banks and credit unions, trade associations, and program managers, urged the Bureau to shorten the proposed 18-month time period and, relatedly, stated that financial institutions would need longer than the proposed nine-month compliance period to implement the requirement as proposed. These commenters argued that the potential costs to industry would outweigh any consumer benefit, since, in their experience, consumers rarely request 18 months of transaction history and do not currently use account

transaction history for tax preparation purposes. Some industry commenters requested a 60-day time period, which they stated would be consistent with the current periodic statement alternative for payroll card accounts and with the error resolution and limited liability notification requirements under Regulation E. Other industry commenters requested a time period of no longer than 12 months, arguing that most financial institutions do not retain more than 12 months of account transaction history in a real-time online format, and therefore, requiring a longer time period would be problematic for financial institutions. These commenters also stated that 12 months would be sufficient for consumers to manage their accounts and would be consistent with consumer expectation. Several other industry commenters requested that the Bureau instead require financial institutions to provide consumers with a copy of their written account transaction history upon request once every 12 months at no cost and then allow financial institutions to charge a reasonable fee for any subsequent requests made during that 12-month time period. One of the credit union commenters argued that the time period to provide account transaction history should be left to the financial institution's discretion.

Several of these industry commenters argued that maintaining 18 months of account transaction history would result in significant costs to financial institutions. These commenters explained that storing and securing such information would lead to operational costs related to upgrading systems, changing record retention policies and procedures, and training personnel.[476] Several credit union trade associations argued that the proposed time period would be especially problematic for credit unions because they retain limited historical account information in their systems and rely on periodic statements if a member requests information beyond what is in their systems.[477]

Several industry commenters explained some of the differences between the types of information needed to make available and provide electronic and written account transaction histories and the costs associated with maintaining each. These commenters stated that generally, information in a real-time, online database is necessary to make available electronic account transaction history, and archived information is retrieved to provide written account transaction history that extends beyond the time period retained in the real-time database. These commenters stated that real-time information is usually archived after 12 months of the account being opened or when the account is closed, if sooner, and typically retained for several years. They explained that real-time information is easier to access, but more expensive to maintain than archived information, and archived information is inexpensive to maintain, but can be difficult to access. These commenters therefore concluded that maintaining 18 months of electronic account transaction information would be costly because maintaining that length of real-time information is expensive. These commenters further argued that responding to one-off requests from consumers for 18 months of written account transaction history would also be problematic because archived information, although inexpensive to maintain, is usually restricted to certain personnel or stored with a third-party processor, who typically charges a fee to retrieve the information. These commenters also argued that mailing account transaction histories that cover a time period longer than 60 days would increase printing and mailing costs.

Despite the costs associated with retrieving archived information, these commenters stated that they would rather provide a longer period of written account transaction history than make available a longer period of electronic account transaction history, given that maintaining electronic history is more expensive. However, because of the cost and complexity associated with retrieving archived information, these commenters requested that the Bureau allow financial institutions to begin accumulating data as of the effective date of the final rule (until they have built up to 18 months of accumulated transaction history), rather than requiring financial institutions to make available or provide the full length of account transaction histories as of the effective date, to alleviate some of the compliance burden.

A few program managers suggested further modifications that they believed would help reduce the costs associated with the proposed periodic statement alternative. Two of these program managers urged the Bureau to allow financial institutions to charge a fee for responding to requests for written account transaction histories. Another requested that the Bureau expressly allow financial institutions to inform consumers that they may request written history that covers less than the required time period.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.18(c)(1)(ii) and (iii) with modifications to revise the time periods a consumer's electronic and written account transaction history must cover. Specifically, final § 1005.18(c)(1)(ii) requires financial institutions to make available electronic account transaction history that covers at least 12 months preceding the date the consumer electronically accesses the account, instead of 18 months as proposed. Final § 1005.18(c)(1)(iii) requires financial institutions to provide written account transaction history that covers at least 24 months preceding the date the financial institution receives the consumer's request, instead of 18 months as proposed. The Bureau continues to believe that, based on how consumers are currently using prepaid accounts, access to more than 60 days of electronic and written account transaction history will be beneficial to consumers for a variety of reasons, such as monitoring for unauthorized transactions, tracking spending habits, demonstrating on-time bill payment, and compiling year-end data for tax preparation purposes.

However, based on the response from industry commenters, the Bureau is persuaded that providing 18 months of electronic account transaction history could be particularly burdensome to industry, especially since costs related to retaining electronic history increase as the time period lengthens. The Bureau believes that 12 months of electronic account transaction history is consistent with the length of history consumers expect to access online and should not be problematic for financial institutions since many already provide at least 12 months of account transaction history, as discussed by industry commenters. The Bureau thus believes this revision strikes the appropriate balance between burden imposed on industry overall while, in conjunction with final § 1005.18(c)(1)(iii), ensuring that additional transaction history will be available for consumers who need it. The Bureau reminds financial institutions that neither they nor their

[476] These industry commenters also described specific actions that they believed would increase costs and burden. These included updating data processor systems (or developing interfaces with third-party providers' processing systems); purchasing data storage systems; and redesigning platforms and Web sites.

[477] Under the Bureau's proposal, however, if a financial institution provides a periodic statement, it would not have been required to make available 18 months of electronic account transaction history. The Bureau thus believes these commenters' concerns regarding issues related to retaining a longer period of account history are misplaced.

service providers are permitted to charge consumers a fee for accessing electronic account transaction history when providing that information as part of the periodic statement alternative pursuant to § 1005.18(c)(1)(ii).

Considering the costs associated with maintaining electronic account transaction history, as discussed by commenters, the Bureau declines at this time to require financial institutions to provide electronic account transaction history covering a time period longer than 12 months. However, under the final rule, consumers will be able to request 24 months of written account transaction history pursuant to § 1005.18(c)(1)(iii), which the Bureau believes adequately addresses the various scenarios offered by consumer group commenters as to why consumers may need access to a longer period of account transaction history. In addition, the Bureau does not believe that the time period for electronic account transaction histories should be left to the financial institution's discretion, as requested by one commenter, because consistency across the market reduces any potential for consumer confusion and assures that sufficient history is available for all consumers.

With regard to written account transaction histories, under the final rule, consumers will benefit from having access to two full years of transaction information if needed, without requiring industry to absorb the expense of making that length of information available electronically on an ongoing basis. The Bureau declines to require financial institutions to provide seven years of written account transaction history, as suggested by several commenters. The Bureau believes that 24 months of written history upon request is sufficient to meet the needs of consumers and does not believe it is necessary at this time to require financial institutions to provide an even longer written account history upon request at no cost. Based on information received from industry commenters, the Bureau believes the requirement to provide 24 months of written account transaction history, in conjunction with the requirement to provide 12 months of electronic account transaction history under final § 1005.18(c)(1)(ii), strikes an appropriate balance in providing consumers with the information necessary to manage their accounts while not imposing undue burden on industry. As explained by these commenters, maintaining archived information, which a financial institution will likely need to retrieve to provide 24 months of written history, is less expensive than retaining the real-time information necessary for making electronic history available online. Moreover, because, as explained by some commenters, many financial institutions already retain several years of archived data and consumers do not typically request long periods of written history, the Bureau does not believe that maintaining, retrieving, and providing 24 months of written history upon request should be particularly burdensome to financial institutions. The Bureau notes that financial institutions are not required to provide written history for a longer period than what the consumer actually wants; a financial institution may, for example, inform consumers that they may request written history that covers less than 24 months.

Furthermore, as explained in the proposal, the Bureau anticipates that, in general, written transaction account histories will be sent the next business day or soon after a financial institution receives the consumer's oral or written request. Financial institutions may also designate a specific telephone number for consumers to call and a specific address for consumers to write to request a written copy of their account transaction history.

Regarding industry commenters' concerns about the proposed nine-month compliance period, final § 1005.18(h)(1) imposes a general effective date of October 1, 2017 for this final rule. However, final § 1005.18(h)(3)(i) provides an accommodation for financial institutions that do not have readily accessible the data necessary to make available 12 months of electronic account transaction history pursuant to final § 1005.18(c)(1)(ii) or 24 months of written account transaction history upon request pursuant to final § 1005.18(c)(1)(iii) on October 1, 2017. Specifically, in that case, the financial institution may make available or provide the electronic and written histories using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with the requirements of final § 1005.18(c)(1)(ii) and (iii). See the section-by-section analysis of § 1005.18(h) below for additional information about the final rule's effective dates and related accommodations.

The Bureau received no comments specifically addressing proposed comment 18(c)–1. Accordingly, the Bureau is finalizing comment 18(c)–1 as proposed. This comment explains that the electronic and written history of the consumer's account transactions provided under final § 1005.18(c)(1)(ii) and (iii), respectively, shall reflect transfers once they have been posted to the account. Thus, a financial institution does not need to include transactions that have been authorized but that have not yet posted to the account.

The Bureau received no comments regarding proposed comment 18(c)–2. Accordingly, the Bureau is finalizing comment 18(c)–2 as proposed. This comment explains that the electronic history required under final § 1005.18(c)(1)(ii) must be made available 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, a financial institution satisfies the requirement if it provides electronic history on a Web site in a format that is capable of being printed or stored electronically using a web browser.

The Bureau is finalizing comment 18(c)–3 substantially as proposed, with minor modifications for consistency with the revised time periods in the regulatory text. Specifically, final comment 18(c)–3 clarifies that financial institutions may charge a fee for providing written account transaction history that is older than 24 months. This comment also provides examples of requests that exceed the requirements of final § 1005.18(c)(1)(iii) and which therefore a financial institution may charge a fee. In addition, the Bureau has revised the internal paragraph references to conform to other numbering changes in this final rule.

The Bureau declines at this time to permit financial institutions to charge consumers a fee for providing the written account transaction history required by final § 1005.18(c)(1)(iii), as suggested by some commenters. As with the electronic account transaction history required by § 1005.18(c)(1)(ii), the Bureau believes it is necessary for consumers to have free access to at least 24 months of written account transaction history to effectively manage their prepaid accounts. The Bureau believes 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. The Bureau reminds financial institutions that neither they nor their service providers are permitted to charge consumers a fee for requesting written account transaction history when providing that information as part

of the periodic statement alternative pursuant to § 1005.18(c)(1)(iii).

For the final rule, the Bureau has divided proposed comment 18(c)–4 into two, numbered as final comments 18(c)–4 and –5, to discuss the requirements for electronic and written account transaction history separately. The Bureau is finalizing the portion of comment 18(c)–4 addressing electronic account transaction history, with several modifications. Specifically, final comment 18(c)–4 no longer explains that 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. In addition, final comment 18(c)–4 no longer states that 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. Given the revised time periods that electronic and written account transaction histories must cover, the Bureau has also removed from final comment 18(c)–4 the references to written account transaction history and, as discussed below, is adopting new comment 18(c)–5 to explain separately the requirements for providing access to written account transaction history. In addition, the Bureau has revised the internal paragraph references in comment 18(c)–4 to conform to other numbering changes in this final rule and has made several other modifications for clarity.

Specifically, final comment 18(c)–4 clarifies that, if a prepaid account has been opened for fewer than 12 months, the financial institution need only provide electronic account transaction history pursuant to final § 1005.18(c)(1)(ii) since the time of account opening. Final comment 18(c)–4 also explains that, if a prepaid account is closed or becomes inactive, as defined by the financial institution, the financial institution need not make available electronic account transaction history. This comment cross-references comment 9(b)–3.[478] However, if an inactive account becomes active, the financial institution must again make available 12 months of electronic account transaction history. The Bureau does not believe it is necessary to require financial institutions to continue making access to electronic history available for closed and inactive accounts because consumers do not typically expect to access this information electronically once an account is closed or becomes inactive. The Bureau also believes that not requiring financial institutions to provide electronic access for closed and inactive accounts will reduce burden on industry relative to the proposal, and consumers will still have access to such information, if needed, in writing upon request as required by final § 1005.18(c)(1)(iii).

As noted above, the Bureau is adopting new comment 18(c)–5 to explain the requirements for providing access to written account transaction history that had been addressed in proposed comment 18(c)–4. The Bureau is adopting the requirements substantially as proposed, with several minor modifications. Specifically, new comment 18(c)–5 explains that a financial institution may provide fewer than 24 months of written account transaction history if the consumer requests a shorter period of time. This comment also clarifies that, if a prepaid account has been opened for fewer than 24 months, the financial institution need only provide written account transaction history pursuant to final § 1005.18(c)(1)(iii) since the time of account opening. Even if a prepaid account is closed or becomes inactive, the financial institution must continue to provide upon request at least 24 months of written account transaction history preceding the date the request is received. When a prepaid account has been closed or inactive for 24 months or longer, the financial institution is no longer required to make available any written account transaction history pursuant to final § 1005.18(c)(1)(iii). In addition, the Bureau has revised the internal paragraph references in comment 18(c)–5 to conform to other numbering changes in this final rule and has made several other modifications for clarity.

18(c)(2) Periodic Statement Alternative for Unverified Prepaid Accounts

The Bureau is adopting new § 1005.18(c)(2) to provide a modified version of the periodic statement alternative for prepaid accounts that cannot be or have not been verified by the financial institution. Specifically, for prepaid accounts that are not payroll card accounts or government benefit accounts, the final rule does not require a financial institution to provide written account transaction history pursuant to final § 1005.18(c)(1)(iii) for any prepaid account for which the financial institution has not completed its consumer identification and verification process as described in final § 1005.18(e)(3)(i)(A) through (C).

The Bureau did not receive any comments on this issue, but upon further consideration, believes this modification to the periodic statement alternative would be appropriate, particularly in light of the modifications the Bureau has made to the error resolution requirements for unverified accounts in final § 1005.18(e)(3). The Bureau believes that the limited nature of prepaid accounts that cannot be or have not been verified by a financial institution does not justify requiring financial institutions to provide written account transaction histories upon request for these accounts. The Bureau believes that these accounts do not typically remain active for more than 12 months, and even if they do, they are usually only used to conduct a limited number of transactions. In addition, a financial institution will not likely have a physical address for an unverified prepaid account, and therefore, cannot mail a copy of the consumer's written account transaction history. The Bureau believes, however, that consumers of these accounts still need to have access to balance information by telephone as well as electronic account transaction history in order to manage their accounts.

The Bureau is adopting new comment 18(c)–6 to provide further guidance on the periodic statement alternative for unverified accounts provided in § 1005.18(c)(2). Specifically, comment 18(c)–6 explains that, if a prepaid account is verified, a financial institution must provide written account transaction history upon the consumer's request that includes the period during which the account was not verified, provided the period is within the 24-month time frame specified in final § 1005.18(c)(1)(iii).

18(c)(3) Information Included on Electronic or Written Histories

Under existing § 1005.18(b)(2), the history of electronic and written account transactions for payroll card accounts 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 proposed to extend this existing requirement to all prepaid accounts 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 the requirement unchanged.

[478] Existing comment 9(b)–3 provides that a financial institution is not required to send periodic statements to consumers whose accounts are inactive as defined by the financial institution.

The Bureau received comments from an issuing bank, an industry trade association, and a program manager on this provision, stating that they agreed with the Bureau's proposal to leave this provision unchanged. Accordingly, the Bureau is finalizing § 1005.18(c)(2), renumbered as § 1005.18(c)(3), as proposed.

18(c)(4) Inclusion of All Fees Charged

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 EFTs or account maintenance. The Bureau notes that Regulation DD requires that periodic statements disclose all fees debited to accounts covered by that regulation.[479] 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.'' [480] Because some prepaid accounts, as proposed to be defined under Regulation E, may not also constitute accounts as defined under Regulation DD (or the corresponding regulations applicable to credit unions),[481] the Bureau proposed § 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 EFTs and account maintenance.

Proposed § 1005.18(c)(3) would have stated 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 EFTs or otherwise. The Bureau received no comments on this portion of the proposal.

For the reasons set forth herein, the Bureau is finalizing § 1005.18(c)(3), renumbered as § 1005.18(c)(4), substantially as proposed, with several modifications for clarity. 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 modify the periodic statement requirements of EFTA section 906(c) to require inclusion of all fees charged. These revisions will assist consumers' understanding of their prepaid account activity. In addition, the Bureau is also using its disclosure authority pursuant to section 1032(a) of the Dodd-Frank Act because the Bureau believes that comprehensive disclosure of fee information will help ensure that the features of prepaid accounts are fully, accurately, and effectively disclosed to consumers, over the term of the product or service, in a manner that permits consumers to understand the costs, benefits, and risks associated with prepaid accounts.

Final § 1005.18(c)(4) states that a financial institution must disclose the amount of any fees assessed against the account, whether for EFTs or otherwise, on any periodic statement provided pursuant to § 1005.9(b) and on any history of account transactions provided or made available by the financial institution.

The Bureau is also adopting new comment 18(c)–7 to further clarify the requirements of final § 1005.18(c)(4). Specifically, this comment explains that a financial institution that furnishes a periodic statement pursuant to § 1005.9(b) for a prepaid account must disclose the amount of any fees assessed against the account, whether for EFTs or otherwise, on the periodic statement as well as on any electronic or written account transaction history the financial institution makes available or provides to the consumer. For example, if a financial institution sends periodic statements and also makes available the consumer's electronic account transaction history on its Web site, the financial institution must disclose the amount of any fees assessed against the account, whether for EFTs or otherwise, on the periodic statement and on the consumer's electronic account transaction history made available on its Web site. Likewise, a financial institution that follows the periodic statement alternative in final § 1005.18(c)(1) must disclose the amount of any fees assessed against the account, whether for EFTs or otherwise, on the electronic history of the consumer's account transactions made available pursuant to final § 1005.18(c)(1)(ii) and any written history of the consumer's account transactions provided pursuant to final § 1005.18(c)(1)(iii).

The Bureau sought 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. The Bureau received no comments on this issue and the Bureau is making no additional changes to final § 1005.18(c)(4) other than those discussed herein.

18(c)(5) Summary Totals of Fees

The Bureau's Proposal

Proposed § 1005.18(c)(4) would have required financial institutions to 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 have been 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)(1)(ii) or otherwise, and on any written history of account transactions provided pursuant to proposed § 1005.18(c)(1)(iii). The Bureau's proposed summary total of fees requirement was similar to the requirement to disclose fees and interest in open-end credit plans under Regulation Z.[482]

Proposed comment 18(c)–5 would have explained that if a financial institution provides periodic statements pursuant to § 1005.9(b), the total fees, deposits, and debits may be disclosed for each statement period rather than for each calendar month, if different. Proposed comment 18(c)–5 would have also explained that the fees that must be included in the summary total include those that are required to be disclosed pursuant to proposed § 1005.18(b)(2)(ii)(A). For example, an institution would have been required to include the fee it charges a consumer for using an out-of-network ATM in the summary total of fees, but it would not have been required to 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 have explained that the summary total of fees should be net of any fee reversals and that 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 have explained that the total deposits and total debits

[479] Regulation DD § 1030.6(a)(3).

[480] Regulation DD § 1030.2(a).

[481] *See* 12 CFR part 707.

[482] *See* Regulation Z § 1026.7(b)(6).

must include all deposits to and debits from the prepaid account, not just those deposits and debits that are the result of EFTs.

Comments Received

The Bureau received comments from several consumer groups, who supported this portion of the proposal and argued that setting apart monthly and year-to-date fee totals would help consumers understand the costs associated with their accounts and how to minimize fees. These commenters stated that financial institutions should also be required to include a statement that indicates actions consumers can take to lower their fees, such as using network ATMs.

Several industry groups, including program managers, issuing banks, credit unions, and a trade association generally supported this portion of the proposal and the goal of providing consumers access to information needed to manage their prepaid accounts, but cautioned that implementing the requirement as proposed would require more time than the proposed nine-month compliance period and would require costly system updates. For example, a credit union explained that the proposed summary total of fees requirement would be complex and burdensome for a financial institution that houses its data with a third-party processor and stated that retrieving the data to perform the analysis would be costly. In addition, an issuing bank explained that the proposal would require changes to the prepaid account processing infrastructure design and stated that those changes would be inconsistent with how statements are calculated for checking and other consumer asset accounts that tend to share the same processing infrastructure. A government benefits card program manager argued that, because the summary totals requirement would take significant time and investments to implement, the Bureau should exempt government benefit accounts from this aspect of the proposal. A program manager argued that the summary totals requirement would not be appropriate for non-reloadable products. A program manager requested that, for financial institutions that do not have the data to calculate the summary totals as of the final rule's effective date, the requirement be implemented on a going-forward basis only.

Regarding the proposed requirement to disclose the summary totals of fees specifically, these commenters stated that they recognize the value in providing aggregated fees paid over time and therefore support the overall goal the Bureau seeks to achieve by including this provision. However, several industry commenters, including program managers and issuing banks, urged the Bureau to require financial institutions to include in the summary totals of fees only fees that are discernible to the financial institution. These commenters explained that a transaction that includes a third-party fee, such as an out-of-network ATM fee, may not separate the fee portion from the total amount and therefore determining the fee amounts for each consumer would be costly and burdensome. These commenters also stated that financial institutions cannot provide details about or accurately disclose those fees. An issuing bank stated that a financial institution also cannot determine whether a fee was waived due to the consumer's relationship with the third party. One consumer group argued, however, that financial institutions can determine the amounts of third-party fees. This commenter explained that, if a consumer withdraws $40 in cash from an ATM that charges a $2.50 out-of-network fee, the withdrawal will appear as $42.50, and the financial institution would be able to discern the $2.50 third-party fee. A payroll card program manager requested that the Bureau allow financial institutions to provide a form disclaimer regarding fees that are outside of the financial institution's control or an example showing consumers when such fees may occur. Another program manager requested that the Bureau allow financial institutions to distinguish fees for using a prepaid account (such as per transaction fees), optional fees, and third-party fees.

Several industry commenters also suggested other modifications to this aspect of the proposal, which they believed would minimize the costs and burdens to industry. For example, a credit union requested that financial institutions not be required to provide paper statements displaying the summary totals of fees and argued that displaying fees on electronic statements is sufficient and the most appropriate way to communicate with consumers. Another credit union and a program manager requested that the year-to-date calculation be eliminated. The credit union argued that consumers usually find year-to-date totals confusing and can instead calculate their own totals using the information available online. On the other hand, another program manager argued that that the proposed summary by calendar month is overly proscriptive and inconsistent with consumer usage and preference. This commenter explained that the transaction history begins on the date of the first transaction (not the first day of the month) and continues until the account is closed or becomes inactive for a period of time.

One issuing bank opposed this portion of the proposal altogether, arguing that providing summary totals of fees would not help consumers understand how to limit such fees, unless the summary distinguishes behavior-based fees (*i.e.,* fees that apply to certain conduct engaged in by the accountholder, such as out-of-network ATM fees) from service-based fees (*i.e.,* fees that apply to all accountholders without regard to conduct, such as monthly fees). This commenter also requested, if the Bureau decides to finalize this portion of the proposal, that the Bureau clarify definitions for the terms fee, deposit, and debit.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing proposed § 1005.18(c)(4), renumbered as § 1005.18(c)(5), with modifications as described below. 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 modify the periodic statement requirements of EFTA section 906(c) to require 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 section 1032(a) of the Dodd-Frank Act because the Bureau believes that disclosure of these summary totals of fees will help ensure 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.

The Bureau is finalizing the requirement that financial institutions provide the summary totals of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date. The Bureau has removed the requirement that financial institutions provide summary totals of all deposits to and debits from a

consumer's prepaid account from the final rule.

The Bureau believes the final rule will provide consumers important information for better understanding and managing their prepaid accounts. The Bureau agrees with commenters that displaying the summary totals of fees is valuable to consumers and believes the requirement will be an important consumer education and money management tool that will help consumers understand the actual costs of using their prepaid accounts. The Bureau believes that this requirement will be beneficial to consumers of all prepaid accounts, including government benefit accounts, and is therefore not exempting any accounts from this requirement. The Bureau is not, however, requiring financial institutions to include a statement that indicates actions consumers can take to lower their fees, as requested by consumer group commenters. The Bureau does not believe such a requirement justifies the additional costs to financial institutions at this time. However, the Bureau believes it is beneficial for financial institution to educate and inform consumers on how to avoid fees, as many do currently. The Bureau will continue to monitor industry practice and may revisit this issue at a later time.

The Bureau believes that not requiring financial institutions to provide the summary totals of all deposits to and debits from a prepaid account will not harm consumers. The Bureau believes that consumers likely know how much money is deposited into and debited out of their accounts and can easily calculate this information by using the data from their transaction history and account balance. In addition, the Bureau believes that the modification to limit the summary totals requirement to fees only and the modifications to the rule's effective date discussed below addresses industry commenters' concerns about not having sufficient time to implement the requirement.

The Bureau is finalizing the proposed portion of § 1005.18(c)(4) (renumbered as § 1005.18(c)(5)) that requires the summary totals of fees to appear on any periodic statement for a prepaid account provided pursuant to § 1005.9(b) and on any history of account transactions provided or made available by the financial institution pursuant to final § 1005.18(c)(1)(ii) and (iii). As discussed in the section-by-section analysis of § 1005.18(c)(1) above, consumers value receiving information about their accounts in both electronic and paper forms. The Bureau believes that it is important for consumers to have access to summary totals of fees for their accounts regardless of the method by which they access their account information.

The Bureau is not requiring that third-party fees, such as out-of-network ATM fees and cash reload fees, be included in the summary totals. Final § 1005.18(c)(5) provides, in part, that the summary totals consist of fees assessed by the financial institution against the consumer's account, as explained further in comment 18(c)–8.ii, discussed below. The Bureau agrees with industry commenters that, even if financial institutions can determine whether third-party fees were assessed against a prepaid account, requiring them to extract details about such fees could be problematic for financial institutions, especially for transactions that involve foreign currency conversion calculations. The Bureau notes that third-party cash reload fees do not need to be included in the summary totals of fees. This is different from how cash reload fees are treated in the pre-acquisition disclosures context, where financial institutions must include third-party cash reload fees on the short form disclosure.[483]

Regarding a program manager's request to permit financial institutions to distinguish fees in the fee totals, noted above, the Bureau agrees that allowing some flexibility in how financial institutions display summary totals of fees may be beneficial to consumers. The Bureau has clarified in comment 18(c)–9, discussed below, that financial institutions may also include sub-totals of the types of fees that make up the summary totals of fees. The Bureau reminds financial institutions that all disclosures should be clear and readily understandable as required by § 1005.4(a), including the summary totals of fees pursuant to final § 1005.18(c)(5) and any sub-totals thereof.

Regarding industry commenters' concerns about the proposed nine-month effective date, final § 1005.18(h)(1) imposes a general effective date of October 1, 2017 for this final rule. However, final § 1005.18(h)(3)(ii) provides an accommodation for financial institutions that do not have readily accessible the data necessary to calculate the summary totals of fees pursuant to final § 1005.18(c)(5) on October 1, 2017. Specifically, in that case, the financial institution may provide the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by final § 1005.18(c)(5). See the section-by-section analysis of § 1005.18(h) below for additional discussion regarding the final rule's effective date and related accommodations.

The Bureau has modified proposed comment 18(c)–5, renumbered as comment 18(c)–8, to reflect the revision to the regulatory text discussed above, and to make several modifications for clarity. Also, for clarity, the Bureau has divided this comment into two parts: Final comment 18(c)–8.i explains the summary totals of fees requirement generally and final comment 18(c)–8.ii clarifies the requirements regarding third-party fees. Specifically, final comment 18(c)–8.i explains that a financial institution that furnishes a periodic statement pursuant to § 1005.9(b) for a prepaid account must display the monthly and annual fee totals on the periodic statement, as well as on any electronic or written account transaction history the financial institution makes available or provides to the consumer. For example, if a financial institution sends periodic statements and also makes available the consumer's electronic account transaction history on its Web site, the financial institution must display the monthly and annual fee totals on the periodic statement and on the consumer's electronic account transaction history made available on its Web site. Likewise, a financial institution that follows the periodic statement alternative in final § 1005.18(c)(1) must display the monthly and annual fee totals on the electronic history of the consumer's account transactions made available pursuant to final § 1005.18(c)(1)(ii) and any written history of the consumer's account transactions provided pursuant to final § 1005.18(c)(1)(iii). In addition, this comment clarifies that, if a financial institution provides periodic statements pursuant to § 1005.9(b), fee totals may be disclosed for each statement period rather than each calendar month, if different. This comment also clarifies that the summary totals of fees should be net of any fee reversals.

Final comment 18(c)–8.ii clarifies that a financial institution may, but is not required to, include third-party fees in its summary totals of fees provided pursuant to final § 1005.18(c)(5). For example, a financial institution must include in the summary totals of fees the fee it charges a consumer for using an out-of-network ATM, but it need not include any fee charged by an ATM operator, with whom the financial institution has no relationship, for the consumer's use of that operator's ATM.

[483] *See* final § 1005.18(b)(2)(iv); *see also* final § 1005.18(b)(3)(v).

Similarly, a financial institution need not include in the summary totals of fees the fee charged by a third-party reload network for the service of adding cash to a prepaid account at a point-of-sale terminal.

The Bureau is also adopting new comment 18(c)–9 to clarify that a financial institution may, but is not required to, also include sub-totals of the types of fees that make up the summary totals of fees as required by final § 1005.18(c)(5). For example, if a financial institution distinguishes optional fees (*e.g.,* custom card design fees) from fees to use the account, in displaying the summary totals of fees, the financial institution may include sub-totals of those fees, provided the financial institution also presents the combined totals of all fees.

18(d) Modified Disclosure Requirements

The Bureau proposed 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 proposed to renumber existing § 1005.18(c)(1) and (2) as § 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).

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). In preparing the proposal, 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 did not believe such a modification was necessary.

The Bureau requested 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 sought comment on whether financial institutions would face particular challenges in providing annual error resolution notices to all prepaid consumers, as well as whether it should have required 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.

Few commenters submitted feedback on this portion of the proposal. An issuing bank urged the Bureau to shorten the written error resolution notice it would be required to provide consumers by proposed § 1005.18(d)(1)(ii), and to permit financial institutions to post the complete notice electronically instead of providing it in writing. The commenter argued that the initial disclosures were generally too lengthy, potentially leading to consumer inattention and confusion. A consumer group commenter similarly urged the Bureau to simplify the notice and require that it be distributed as a separate, stand-alone form.

With respect to the annual error resolution notice and the alternative in proposed § 1005.18(d)(2), several industry commenters, including trade associations, a program manager, and a payment processor, argued that the Bureau should eliminate the annual error resolution requirement, or narrow it to only apply to active and/or registered prepaid accountholders. These commenters argued that consumers do not want to receive unsolicited paper notices. A trade association representing credit unions argued that both the annual and periodic notices were unnecessary since the terms of these notices remain static from year to year and could more simply be incorporated into the cardholder agreement. A consumer group commenter argued by contrast that the Bureau should retain a requirement to provide a written annual notice for dormant accounts.

For the reasons set forth herein, the Bureau is finalizing § 1005.18(d) as proposed, with minor revisions for clarity and consistency. 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 adopt an adjustment to the error resolution notice requirement of EFTA section 905(a)(7), to permit notices for prepaid accounts as described in final § 1005.18(d)(2), in order to facilitate compliance with error resolution requirements.

The Bureau has considered the modifications suggested by commenters but declines to adopt tailored requirements for how and when financial institutions must disclose information about consumers' rights related to error resolution, limited liability, and access to account information for prepaid accounts. The Bureau continues to believe that it is appropriate to apply to all prepaid accounts the account access and error resolution disclosure requirements that currently apply to payroll card accounts. The Bureau believes that the existing regime strikes an appropriate balance by providing consumers with enough information to know about and exercise their rights without overwhelming them with more information than they can process or put to use.

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 EFTs. The Bureau proposed to extend to all prepaid accounts the Payroll Card Rule's limited liability provisions and error resolution provisions, including provisional credit. The Bureau also proposed 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 into final § 1005.18(d)(1) and (2), these changes were 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 in detail in the section-by-section analyses of § 1005.18(e)(1), (2), and (3) below, the Bureau proposed 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 except unverified prepaid accounts from the limited liability and error resolution requirements.

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 and government benefit accounts, § 1005.6(a) provides that a consumer may be held liable for an unauthorized EFT 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.[484] Pursuant to § 1005.6(b)(1), 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. Pursuant to § 1005.6, 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. Section 1005.6(b)(3) provides, in part, that a consumer must report an unauthorized EFT 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 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 made available to the consumer 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.

The Bureau proposed to extend to all prepaid accounts the existing limited liability provisions of Regulation E with modifications to certain timing requirements for financial institutions following the periodic statement alternative in proposed § 1005.18(c)(1).[485] The text of proposed § 1005.18(e)(1) featured certain minor modifications for consistency but otherwise was unchanged from existing § 1005.18(c)(3).

Several consumer groups urged the Bureau to harmonize the liability limitations provided under Regulation E with those provided in Regulation Z for credit cards. Under Regulation Z § 1026.12(b), a cardholder's liability for an unauthorized transfer cannot exceed $50; the payment networks' dispute rules, which apply to network-branded prepaid cards, generally apply the Regulation Z limitations on liability. The commenters argued that it is confusing to have different liability limitation amounts potentially apply to a transaction on the same card. The commenters argued that the limitation amounts in Regulation E should be reduced to $50, in line with the limitation amounts in Regulation Z.

The Bureau is adopting § 1005.18(e)(1) as proposed, with minor revisions for clarity and consistency. 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 under EFTA 904(c) to modify the timing requirements of EFTA 909(a). In addition, the Bureau has considered the modifications suggested by commenters, but declines to revise the liability limitations for prepaid accounts set forth in § 1005.18(e)(1). The dollar amount a consumer may be liable for an unauthorized transfer is specified by statute in EFTA section 909(a)(1) and (2). These limitations already apply to payroll card accounts and government benefit accounts. The Bureau is not persuaded that the process of identifying or resolving errors with respect to prepaid accounts is sufficiently different from the process applied with respect to payroll card accounts or government benefit accounts to warrant a separate limited liability regime. Further, the Bureau believes that adopting a different limited liability regime for prepaid accounts than the regime currently in existence accounts generally under Regulation E would require many financial institutions to change their practices, since, as the Bureau noted in the proposal, the vast majority of programs reviewed in the Bureau's Study of Prepaid Account Agreements already limit consumer liability in accordance with existing Regulation E provisions.[486]

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 and government benefit accounts, in § 1005.11. Specifically, § 1005.11(c)(1) and (3)(i) requires that a financial institution, after receiving notice that a consumer believes an EFT 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 10 business days (20 business days if the EFT 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

[484] 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 EFTs; 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).

[485] The Bureau proposed an additional modification in § 1005.18(e)(3), discussed below, to provide an exception to the requirement to provide limited liability protection when a financial institution had 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 had been provided to the consumer.

[486] The Bureau found in its Study of Prepaid Account Agreements that 87.44 percent of agreements for GPR card programs and 64.28 percent of all other programs' agreements provided full limited liability protections to consumers. *See* Study of Prepaid Account Agreements at 16 tbl.4. Similarly, CFSI found in its 2014 study of the prepaid industry 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. *See* 2014 CFSI Scorecard at 12.

within three business days. After determining that an error occurred, the financial institution must correct an error within one business day.[487] 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 10 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 10 business days of receiving the error notice.[488] Pursuant to § 1005.11(c)(2)(i)(A), 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. Pursuant to § 1005.11(d)(2), 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).

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 made available to the consumer reflects the alleged error, 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 alleged 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.

The Bureau's Proposal

The Bureau proposed 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). The text of proposed § 1005.18(e)(2) updated internal paragraph citations to reflect other numbering changes made in the proposal, but otherwise was unchanged from existing § 1005.18(c)(4). Notably, as set forth in greater detail in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau also proposed an exception to the requirement to provide limited liability and error resolution when a financial institution had 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 had been provided to the consumer. The Bureau proposed to extend to all prepaid accounts existing comment 18(c)–1 regarding the 120-day error resolution safe harbor provision, renumbered as comment 18(e)–1 and with the reference to payroll card accounts changed to prepaid accounts. The Bureau also proposed to extend existing comment 18(c)–2, regarding consumers electronically accessing their account history, to all prepaid accounts, renumbered as comment 18(e)–2. In that proposed comment, the reference to payroll card account was changed to prepaid account, plus one substantive modification to clarify 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 Bureau also proposed to add an additional sentence to the end of proposed comment 18(e)–2 to explain that a consumer would not be 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 proposed to extend existing comment 18(c)–3, regarding untimely notice of error by a consumer, to all prepaid accounts, renumbered as comment 18(e)–3 and with internal paragraph citations updated to reflect other numbering changes made in the proposal. The last sentence of the existing 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 proposed to specifically note that compliance with § 1005.6 included compliance with the extension of time limits provided in § 1005.6(b)(4).

Comments Received

Most industry commenters and all consumer group commenters generally supported the proposal to extend to all prepaid accounts the error resolution provisions currently applicable to payroll card accounts. At the same time, several industry commenters argued that prepaid accounts may have a higher incidence of fraudulently asserted errors than other accounts covered by Regulation E for a number of reasons, including that prepaid accounts are often purchased anonymously; prepaid cards are easier to abandon and are more frequently abandoned by consumers who quickly spend down the balance and discard the card; and prepaid consumers may not have any other ongoing relationship with the issuing bank or program manager. Requiring financial institutions to provide error resolution rights to all prepaid accounts, they argued, would thus result in unsustainable fraud losses for industry, leading to market exit and rising consumer costs. These commenters did not, however, provide any data or particular details in support of their assertions. To avoid this result, these commenters urged the Bureau to limit the application of the error resolution provisions to prepaid accounts in certain respects.

Several industry commenters, including issuing banks, program managers, a payment network, and an industry trade association, urged the Bureau not to require error resolution for certain types of prepaid accounts, such as reload packs or cards that cannot be reloaded.[489] These commenters argued that these products are not transaction account substitutes, and as such should not receive the same protections as other accounts covered under Regulation E. In addition, the commenters argued that fraudulently asserted error claims are more likely to occur on non-reloadable cards, since the cards are mostly unregistered and used for a short period of time. The commenters also stated that the operating margins on these types of cards are slim and argued that, therefore, the costs of providing complete limited liability and error

[487] *See* § 1005.11(c)(1).

[488] 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. § 1005.11(c)(3)(ii).

[489] Several industry commenters requested that the Bureau exempt all non-reloadable prepaid cards, including reload packs, from the definition of prepaid account in proposed § 1005.2(b)(3), thereby excluding such cards from all rule requirements, including error resolution and limited liability requirements. These comments are discussed in the section-by-section analysis of § 1005.2(b)(3) above.

resolution protections, including provisional credit, would outweigh any profits and thus force providers of such products to pass on costs to consumers or exit the market.

Some industry commenters, including several issuing banks, a payment network, and a number of trade associations, expressed particular concern about the requirement to extend provisional credit to prepaid accounts. The issuing bank commenters confirmed that they currently extend provisional credit where appropriate for most types of prepaid accounts. These issuing banks and other industry commenters argued, however, that a mandate requiring them to extend provisional credit would increase their fraud-related costs by emboldening wrongdoers to submit more fraudulent error claims. The commenters urged the Bureau to take one of several approaches to limit the provisional credit requirement. One group of commenters, including several issuing banks and a trade association, suggested that the provisional credit requirement be limited to prepaid accounts held by consumers with whom the issuer has an ''ongoing relationship,'' as evidenced, for example, by repeated electronic deposits to the prepaid account. Another group of commenters, including an industry trade association and an issuing bank, urged the Bureau not to require provisional credit for accounts or transaction types that exhibit characteristics correlated with a heightened risk of fraud. Commenters suggested varied and at times inconsistent ideas about what these characteristics might be, ranging from, for example, the age of the account, how soon after account opening the alleged error occurred, or whether the transaction occurred at the point of sale or at an ATM.

Commenters who recommended limiting provisional credit also argued that the aggregate amount of fraud losses related to provisional credit increases as the time period within which a financial institution must provide provisional credit decreases, and that 10 business days is not long enough to complete an investigation for errors asserted on prepaid accounts. Accordingly, a number of commenters urged the Bureau to extend the 10 business days permitted under § 1005.11(c)(1) to 20 business days for all prepaid accounts, and 30 business days for prepaid accounts held by consumers who do not have an ongoing relationship with the financial institution. Similarly, a payment network and a law firm writing on behalf of a coalition of prepaid issuers requested that financial institutions have flexibility to delay granting provisional credit beyond 10 business days where a factors-based test indicated that there was a significant risk of loss related to the extension of provisional credit.

Consumer advocates, by contrast, argued against rolling back the provisional crediting requirements. They noted that prepaid accounts are used in substantially similar ways as traditional consumer transaction accounts and thus should receive protections for funds lost due to unauthorized use in the same timeframe as other accounts covered by Regulation E. The commenters 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 into their prepaid accounts. Without provisional credit, in the event of an unauthorized transfer, a consumer could be without critical funds for the duration of the financial institution's investigation—up to 45 days, or 90 days in certain circumstances.

Several consumer groups also commented on the timelines in proposed § 1005.18(e)(2) governing when a consumer must report an unauthorized transfer in order to receive error resolution protections, arguing that the current regime is confusing. For example, they noted that the 120-day safe harbor in proposed § 1005.18(e)(2)(ii) is not disclosed on the error resolution notice required by proposed § 1005.18(d)(1)(ii).[490] Consumers may not be aware, therefore, that a different time limit applies to their prepaid account, and may believe their error was timely reported when in fact it was not, or they may fail to report an error that they believed was no longer timely when in fact it was. In addition, the commenters stated that many consumers do not receive paper statements and never access their account information online, so, they argued, a timeline that runs from the date they access their account information should not apply to them. For these reasons, the consumer groups urged the Bureau to adopt a single, uniform time limit of 120 days from the date the transaction was posted to the consumer's account. A number of trade associations representing credit unions also argued that the error resolution reporting timeline should run from the date the transaction was posted to the consumer's account, for the reason that the posting date is an objective and easily discernible point in time. These commenters, however, urged the Bureau to make the timeline a uniform 60 days from the date the transaction was posted.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.18(e)(2) and comments 18(e)–1, –2, and –3 largely as proposed, with minor revisions for clarity and consistency. 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).

The Bureau has considered the comments regarding the implications of extending all of Regulation E's error resolution requirements to prepaid accounts. The Bureau acknowledged in the proposal that prepaid accounts might present unique fraud risks that other transaction accounts may not. The Bureau also acknowledges that these risks may be especially heightened with respect to prepaid accounts that have not been or cannot be registered or whose cardholder identity has not or cannot be verified. It was for these reasons that the Bureau proposed in § 1005.18(e)(3) to exempt financial institutions from the requirement to provide limited liability or error resolution protections, including provisional credit, for accounts with respect to which the financial institution had not completed its consumer identification and verification process. The Bureau is finalizing a limited exemption as to provisional credit, as discussed in the section-by-section analysis of § 1005.18(e)(3) below, but is not exempting financial institutions from the general requirement to provide limited liability and error resolution protections for such accounts.

The Bureau is not persuaded by commenters that the unique risks posed by prepaid accounts warrant modifications to Regulation E's limited liability and error resolution regime beyond the final rule's accommodation for provisional credit on unverified accounts. Indeed, the Bureau understands that most prepaid issuers already provide error resolution with respect to most prepaid accounts, in compliance with the Payroll Card

[490] As discussed above, these provisions were proposed largely unchanged from existing § 1005.18(c)(4)(ii) and (2), respectively. *See also* appendix A–7.

Rule[491] (though, as discussed in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau understands that most financial institutions do not provide provisional credit for accounts that cannot be registered). Indeed, in its Study of Prepaid Account Agreements, 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.[492] The Bureau notes that industry commenters did not dispute the findings of the Bureau's Study nor did they provide any data or particular details in support of their premise that the Bureau's codification of their own existing practices would result in unsustainable fraud losses for the industry. The Bureau thus does not believe that modifications to Regulation E's limited liability and error resolution regime for all prepaid accounts is necessary, and in fact the Bureau has scaled back the exclusion for unverified accounts in proposed § 1005.18(e)(3), discussed below.

The Bureau also declines to categorically exempt non-reloadable cards from the error resolution requirements, as some industry commenters had urged. The Bureau notes that non-reloadable cards can be used to disburse large sums of money to consumers. For example, prepaid accounts that are used to disburse insurance proceeds, tax refunds, or non-recurring employment benefits such as bonuses or termination payments are—or could be—non-reloadable. The funds held in such accounts may be particularly important to a consumer, who may have, for example, lost a home or a job; error resolution is especially critical for a consumer in that position who has been victimized by fraud. The Bureau does not anticipate that the requirement to provide error resolution rights to non-reloadable cards specifically should place a significant regulatory burden on industry.[493]

Likewise, the Bureau declines to exempt certain types of accounts or transactions from the requirement to provisionally credit a consumer's account in the event a financial institution takes longer than permitted by § 1005.11(c)(1) (or § 1005.11(c)(3)(i), as applicable) to investigate an error. The Bureau understands, as noted by consumer group commenters, that consumers who use prepaid accounts may have limited liquid assets and may place or hold a substantial portion of those assets in the prepaid account. Without provisional credit, in the event of an unauthorized transaction or other error, a consumer could be without access to those funds for as long as 90 days, a period of time that could cause a significant disruption to the consumer's household finances. In addition, the Bureau notes that there appears to be no industry consensus around the criteria the Bureau should use as a proxy for an account or transaction's relative riskiness for purposes of determining whether it should be excluded from the provisional credit requirements.[494] Finally, although a significant proportion of industry comment letters voiced some opposition to the proposed provisional crediting requirements, the Bureau understands that most financial institutions are already providing error resolution, including provisional credit, for most prepaid accounts. Therefore, once again, the Bureau does not believe that requiring provisional credit for most prepaid account types should add significant additional costs or otherwise be problematic for industry.

With respect to the suggestions that the Bureau extend the time periods that apply before a financial institution must extend provisional credit, the Bureau notes that, under both the proposal and the final rule, the 20-day time frame requested by some commenters already applies in some circumstances—specifically, financial institutions may take up to 20 business days to investigate errors asserted with respect to transfers that occurred within 30 days of the date of the first deposit into the account.[495] In other words, new accounts, which some commenters indicated are more prone to fraudulent error claims, are already given a longer provisional crediting time frame under Regulation E.

With respect to the suggestion that financial institutions have 30 business days to investigate errors before provisionally crediting the consumer's account, the Bureau notes that, depending on calendar timing, 30 business days could be nearly as long or longer than the 45 calendar days financial institutions currently have to investigate claims when provisional credit is provided.[496] Thus, a rule that extended the pre-provisional credit investigation period to 30 business days would in effect be doing away with the provisional credit requirement altogether for prepaid accounts. For the reasons stated above, the Bureau believes that provisional credit is an important consumer protection, especially for consumers who rely on a prepaid account as the primary means to store and transact with their funds. The Bureau declines to adjust the investigation time periods in such a way as to essentially obviate the provisional credit requirements for prepaid accounts. Finally, with respect to the time limits that apply to a consumer's timely reporting of an error, the Bureau also declines to revise the applicable limits as requested by some commenters. Again, the Bureau notes that the 60-day limit governing how long a consumer has to report an unauthorized transfer is set by statute in EFTA section 908(a). The Bureau did not intend to generally revise that timeline in this rulemaking.

The Bureau is adopting proposed comment 18(e)–3 with a revision to correct an existing scrivener's error.

[491] As discussed above, the FMS Rule requires that the issuer of a prepaid card that receives a Federal payment must 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. In addition, 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 example, requires provisional credit to be given after five days for unauthorized transactions occurring over its network, unless certain exceptions apply.

[492] *See* Study of Prepaid Account Agreements at 13 tbl.3. 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. The Bureau found that 17 of these agreements provided full error resolution protections with provisional credit, three provided error resolution with limitations on provisional credit, and two provided error resolution without provisional credit. *See id.*

[493] Pursuant to final § 1005.2(b)(3)(i)(D) and comment 2(b)(3)(i)–8.v, an account whose only function is to make a one-time transfer of funds into a separate prepaid account, such as a reload pack, is excluded from the final rule. As such, the request to specifically exempt them from § 1005.18(e) is moot.

[494] The Bureau recognized this issue in the proposal. In discussing potential alternatives to the proposed limited liability and error resolution regime, the Bureau considered and rejected several criteria for evaluating an account's riskiness, such as whether the account had been opened for a certain period of time or whether it received direct deposits, concluding that each had serious drawbacks. *See* 79 FR 77102, 77184 (Dec. 23, 2014).

[495] *See* § 1005.11(c)(3)(i).

[496] Depending on holiday schedules and other factors, 30 business days could be longer than 45 calendar days. For example, 30 business days from December 1, 2016 would end on January 17, 2017, whereas 45 calendar days from December 1, 2016 would end two days earlier, on January 15, 2017.

That comment previously stated that financial institutions were not required to comply with the requirements of § 1005.11 with respect to transfers that occurred more than 60 days prior to when a consumer accessed the account or the financial institution sent a written account history. This is a misstatement of existing § 1005.18(c)(4)(i)(A) and (B) (renumbered in this final rule as § 1005.18(e)(2)(i)(A) and (B)), which state that financial institutions must comply with § 1005.11 with respect to notices of error received by the earlier of 60 days after the consumer accesses the account or 60 days after the financial institution sends a written history of the account upon the consumer's request.

18(e)(3) Error Resolution for Unverified Accounts

The Bureau's Proposal

Proposed § 1005.18(e)(3) would have provided that for prepaid accounts that are not payroll card accounts or government benefit accounts, if a financial institution disclosed 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 would not be 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.[497] However, once the consumer's identity had been verified, a financial institution would have had to 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 have explained that for the purpose of compliance with proposed § 1005.18(e)(3), consumer identifying information could include the consumer's full name, address, date of birth, and Social Security number or other government-issued identification number. The comment would have also explained 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 was based on the date the consumer contacted the financial institution to report the unauthorized transfer or alleged error, not the date the financial institution completed its customer identification and verification process. Comment 18(e)–4 would have further explained 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) began 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 stated its understanding 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[498] and the payment card networks' operating rules, among other things, the Bureau understood that customer identification and verification was 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 believed that providers thus had 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 have included 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 expected 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 was 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 proposed to adopt the exemption for unverified accounts because it understood that a financial institution could face difficulties in determining whether an unauthorized transaction occurred if it did not know a prepaid accountholder's identity. For example, a financial institution could 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 believed that financial institutions would follow the customer identification and verification requirements set forth in FinCEN's CIP requirements for banks in 31 CFR 1020.220 or for providers and sellers of prepaid access in 31 CFR 1022.210(d)(1)(iv). However, it sought comment on whether FinCEN's regulations, as discussed above, were the appropriate standard to use for identification and verification of prepaid accountholders, or whether some other standard should be used. Further, the Bureau anticipated that when a consumer called 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 believed that providers had 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. However, the Bureau sought comment on the accuracy of this assumption, and on whether the Bureau should impose a time limit for completion of the customer identification and verification process.

Comments Received

All consumer group commenters expressed support for the Bureau's decision to extend error resolution and limited liability protections to prepaid accounts. Several consumer group commenters detailed at great length the importance of providing consumers—especially consumers who may have a hard time making ends meet—with recourse if their accounts are subject to error or fraud. Thus, while a number of consumer groups expressed cautious support for the proposed limitation on protections for unregistered accounts, stating that they believed it struck a

[497] Relatedly, the Bureau proposed 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 the section-by-section analysis of § 1005.18(b)(2)(xi) above.

[498] *See* 31 CFR 1022.210(d)(1)(iv).

good balance between protecting consumers and ensuring that the rule does not encourage additional fraudulent activity, a number of consumer groups urged the Bureau to revise proposed § 1005.18(e)(3) to require complete limited liability and error resolution for additional account or transaction types. Specifically, one consumer group urged the Bureau to always require limited liability and error resolution where the consumer has a proof of purchase, while another consumer group urged the Bureau to always require the protections with respect to send-money transactions since, it asserted, innocent errors were more likely to occur with respect to that type of transaction. Two other consumer groups asked the Bureau to expand the exclusion of government benefit accounts and payroll card accounts in proposed § 1005.18(e)(3) to explicitly extend to other account types with respect to which the financial institution collects personally identifiable information in order to disburse the funds. For example, they noted that, for accounts such as those used to disburse student loans or insurance proceeds, the financial institution must collect personally identifiable information about the account recipient before distributing the access device. For such accounts, the financial institution has the information it needs to verify a consumer's identity, and as such, should not be eligible for the exemption from the requirement to provide limited liability and error resolution protections.

In addition, two consumer groups expressed concern that the Bureau's decision to exempt unregistered accounts from the requirement to provide error resolution and limited liability protections would incentivize issuers to avoid registering accounts. They urged the Bureau to require registration for all prepaid accounts, arguing that, if registration were not a requirement, financial institutions may try to prevent consumers from registering, and then use the fact of an account's non-registration and verification as a pretext for not providing that account with complete limited liability and error resolution protections. Going further, a city government agency for consumer affairs objected to any limitation on protections for unregistered accounts, arguing that consumers who do not have a chance to register their accounts before becoming victims of fraud nonetheless deserve equal protections under Regulation E.

Several industry commenters expressed support for the Bureau's approach in proposed § 1005.18(e)(3) of not requiring limited liability or error resolution for accounts for which the financial institution had not completed its collection and verification of consumer identifying information. By contrast, there was significant industry opposition to the provision requiring that, once an account was registered and verified, financial institutions provide limited liability and error resolution rights, including provisional credit, for transactions that occurred *prior* to registration. One trade association stated that, for prepaid accounts for which customer identification and verification is attempted but cannot be completed, it would support those accounts receiving some error resolution protections pending completion of the process, but not provisional credit. Other commenters, including a number of trade associations, a program manager, and a payment processor, argued on the one hand that applying limited liability and error resolution provisions to pre-registration errors would greatly increase fraud losses, since it was extremely difficult to investigate an error that occurred before the financial institution knew the identity of the cardholder. On the other hand, these commenters argued that requiring full limited liability and error resolution protections for pre-registration errors would not confer significant additional benefits on consumers since it was unlikely that an error or fraudulent transaction would occur prior to registration.

A program manager and a credit union objected to proposed § 1005.18(e)(3) for slightly different reasons: They viewed it as a requirement that financial institutions conduct consumer identification and identity verification for all prepaid accounts. The program manager, which manages non-reloadable, non-registrable prepaid cards, among other products, argued that not only did the exemption require financial institutions to offer account registration, but it essentially obligated financial institutions to undertake a robust identity verification process with respect to each consumer. Otherwise, consumers could register their accounts with fake names and still be entitled to provisional credit. The Bureau's proposal, the commenter argued, would therefore extend an account registration requirement to accounts that are not currently required to perform such a process under FinCEN regulations, such as single-use or non-reloadable accounts. Such a change to industry practice, it argued, would necessitate major software and systems revisions at a great cost to financial institutions and their customers.

With respect to the Bureau's request for comment on whether it should require financial institutions to adopt a specific standard for collecting and verifying a consumer's identity, several industry commenters, including program managers and a trade association, argued that financial institutions should retain discretion with respect to which registration standard they adopt. They argued further that, whereas the FinCEN standard is effective and should be deemed sufficient for purposes of analyzing whether the financial institution had adequate consumer identification procedures in place, it should not be adopted as the required standard because the goals underlying the FinCEN customer identification requirements—preventing money laundering—differ from those of the proposed rule. Another industry commenter disagreed, arguing that the Bureau should require a single uniform standard for consumer identification and verification, and that the FinCEN standard should be the standard adopted. According to this commenter, the FinCEN standard has been effective in monitoring and preventing fraud for other transaction account types, and as such should prove effective for screening the identities of prepaid accountholders as well.

The Final Rule

For the reasons discussed herein, the Bureau is finalizing § 1005.18(e)(3) and related commentary with several substantive revisions. Specifically, the Bureau has revised the limitation on a financial institution's requirement to provide limited liability and error resolution protections for unregistered accounts. Under the final rule, financial institutions must provide limited liability and error resolution protections for all accounts, regardless of whether the financial institution has completed its consumer identification and verification process with respect to the account. However, for accounts with respect to which the financial institution has not completed its identification and verification process (or for which the financial institution has no process), the financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (3)(ii), as applicable, from receipt of a notice of error to investigate and determine whether an error occurred without provisionally crediting a consumer's account. The Bureau has made several changes to § 1005.18(e)(3) and its commentary to conform the

proposed text to this revised formulation. In addition, it has added regulatory text and commentary, explained in more detail below, to address when a financial institution has completed its consumer identification and verification process, and to clarify that if, at the time the financial institution was required to provisionally credit an account, the financial institution had not yet completed its identification and verification process, the financial institution need not provisionally credit the account.

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 under EFTA section 904(c) to finalize § 1005.18(e)(3) with a modified limitation on financial institutions' requirement to provide limited liability and error resolution for accounts that have not completed the consumer identification and verification process.

As explained in greater detail below, the Bureau is adopting § 1005.18(e)(3) revisions to clarify, in response to industry comments, that it is not requiring financial institutions to adopt a consumer identification and verification process for all prepaid accounts. Because it is concerned that this revision, on its own, would result in a class of un-registrable prepaid accounts that do not receive any limited liability or error resolution protections, however, the Bureau has also revised the scope of the exception in proposed § 1005.18(e)(3). Under the final rule, financial institutions must provide limited liability and error resolution protections for all accounts, regardless of whether the financial institution has completed its consumer identification and verification process with respect to the account. However, for accounts with respect to which the financial institution has not completed its identification and verification process (or for which the financial institution has no process), the financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (3)(ii), as applicable, from receipt of a notice of error to investigate and determine whether an error occurred without provisionally crediting a consumer's account.

The Bureau agrees with commenters that the proposed rule left open the question of whether financial institution had to adopt a consumer identification and verification process, or whether certain prepaid account types that do not offer or require an account registration process could continue to allow their customers to use the cards anonymously. The Bureau believes that there are legitimate reasons a consumer may opt for a particular account type—such as certain non-reloadable cards—that allows him or her to remain anonymous. Similarly, the Bureau is sensitive to industry's concerns that requiring financial institutions to adopt a consumer identification and verification regime where they previously did not have one would result in increased costs and, potentially, decreased consumer access to certain prepaid account products. Accordingly, the Bureau has declined to finalize a requirement that all prepaid accounts offer some sort of registration process.

However, the Bureau is also concerned that financial institutions will choose not to offer registration or to delay completing registration as a way to avoid having to provide provisional credit. To that end, the Bureau is adopting new comment 18(e)–5, which provides an example of when a financial institution has not concluded the consumer identification and verification process with respect to a particular consumer: The example describes a financial institution that initiates the identification and verification process by collecting identifying information about a consumer and informing the consumer of the nature of the outstanding information, but, despite efforts to obtain additional information from the consumer, is unable to conclude the process because of conflicting information about the consumer. For the same reasons, the Bureau is finalizing a clarification in new comment 18(e)–5 stating that a financial institution may not delay completing its customer identification and verification process or refuse to verify a consumer's identity based on a consumer's assertion of an error. The Bureau believes that, as stated above, financial institutions have an incentive to encourage consumers to register their accounts to increase the functionality and thus the longevity of consumers' use of their accounts.

To clarify that it is not requiring financial institutions to adopt a consumer identification and verification process for prepaid accounts, the Bureau has finalized a provision that makes clear that financial institutions that do not offer a process by which a consumer's identifying information is collected and identity verified have not completed the consumer identification and verification process with respect to that account. As such, and as described in more specific detail below, with respect to such accounts that cannot be registered, the financial institution may avail itself of the limited exemption from the provisional credit requirements.

The Bureau is concerned, however, that adding this clarification would expand the scope of the limited exemption in proposed § 1005.18(e)(3) in ways that would leave many vulnerable consumers unprotected. The Bureau agrees with the numerous consumer groups that emphasized the importance of limited liability and error resolution for prepaid consumers. In addition, 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 necessary to avoid consumer confusion as to what protections apply to similar accounts. Indeed, the Bureau notes that its testing showed that prepaid consumers currently expect prepaid products to be accompanied by protections for error or unauthorized use.[499]

The Bureau is concerned, therefore, that § 1005.18(e)(3), as revised by the clarification discussed above regarding un-registrable accounts, would leave such accounts without any limited liability and error resolution protections enforceable under Federal law during its entire existence, instead of only during the limited time before which a consumer registers his or her card. The Bureau did not intend to leave this entire class of prepaid accounts without such consumer protections. At the same time, as stated above, the Bureau acknowledges industry's concerns about the potential costs of having to extend provisional credit for accounts where the financial institution does not know and has not verified the consumer's identity.

To balance these concerns, the Bureau has revised the proposed limitation on the requirement to provide limited liability and error resolution protections in proposed § 1005.18(e)(3). Rather than limit the requirement to provide any limited liability and error resolution protections, the final rule only limits the requirement to extend provisional credit for accounts with respect to which the

[499] *See, e.g.,* ICF Report I 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.'').

financial institution has not completed its consumer identification and verification process. Thus, under new § 1005.18(e)(3)(i), with respect to accounts other than payroll card or government benefit accounts, a financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (3)(ii), as applicable, from receipt of a notice of error to investigate and determine whether an error occurred without provisionally crediting a consumer's account if the financial institution has not completed its consumer identification and verification process with respect to that prepaid account. In effect, revised § 1005.18(e)(3)(i) now operates as an additional exception to § 1005.11(c)(2)(i), akin to existing § 1005.11(c)(2)(i)(A) and (B). As discussed above, the Bureau has added a new § 1005.11(c)(2)(i)(C) to make that clear. The Bureau is likewise adding a reference to new § 1005.11(c)(2)(i)(C) in § 1005.18(e)(3)(i) to clarify its operation.

The Bureau believes this revision is necessary to ensure that all prepaid account consumers have some recourse when they experience an unauthorized or erroneous transfer. While the Bureau considered whether to require limited liability and error resolution for unregistered accounts only when the accounts cannot be registered, the Bureau believes it is preferable to treat all unregistered accounts uniformly. Once again, the Bureau also believes this approach will help reduce consumer confusion as to what protections apply to similar accounts, especially in light of the Bureau's observations that prepaid consumers currently expect prepaid products to be protected against unauthorized use and other errors. Furthermore, the Bureau understands that, by revising the proposed limitation on the requirement to provide limited liability and error resolution as described herein, the Bureau is aligning § 1005.18(e)(3) with current industry practice. The Bureau believes the narrower limitation in revised § 1005.18(e)(3)(i) addresses the majority of industry's concerns. Again, the Bureau understands that most prepaid issuers already offer limited liability and error resolution protections with respect to most account types they offer.[500] Indeed, many issuing bank commenters confirmed that they provide some limited liability and error resolution protections—but no provisional credit—for accounts that have not or cannot be registered. As such, the Bureau believes that the final rule generally reflects current industry practice and should not place a significant increased burden on financial institutions.

The Bureau is also revising the scope of the exclusion in § 1005.18(e)(3) beyond government benefit and payroll card accounts. As it noted in the proposal, the Bureau agrees with commenters that financial institutions providing prepaid accounts for purposes such as student financial aid disbursement or insurance payments should not be able to avail themselves of the exclusion in § 1005.18(e)(3), because consumer identifying information is typically collected and verified by the financial institution or its service provider prior to or as part of the acquisition process for those accounts.[501] In the proposal, the Bureau expressly excluded government benefit and payroll card accounts from § 1005.18(e)(3) for a similar reason—that is, because it believed financial institutions often conduct the consumer identification and verification at the onset of the relationship with a government benefit or payroll card account customer.[502] However, it did not expressly exclude from § 1005.18(e)(3) other types of accounts that similarly collect and verify consumer information prior to or during the acquisition process. The Bureau is now finalizing commentary that clarifies that such accounts cannot avail themselves of § 1005.18(e)(3).

Specifically, new comment 18(e)–6 states that a financial institution that collects and verifies consumer identifying information, or that obtains such information after it has been collected and verified by a third party, prior to or as part of the account acquisition process, is deemed to have completed its consumer identification and verification process with respect to that account. The reference to a third party collecting the verified information is intended to codify the Bureau's understanding, stated in the proposal, that collection and verification of information can be done by the financial institution directly, as well as by a service provider or agent of the institution. The comment provides an example of a financial institution that obtains from a university the identifying information necessary to disburse funds to students via the financial institution's prepaid account. Such a financial institution, the example states, would be deemed to have completed its consumer identification and verification process with respect to those students' accounts.

Next, the Bureau believes that financial institutions should maintain discretion with respect to the type of consumer identification and verification process they adopt. As such, the Bureau is not finalizing a requirement that financial institutions adopt the FinCEN registration process, nor any other specific process for how to identify and verify an account, except that it is finalizing the guidance in proposed comment 18(e)–4 that consumer identifying information may include the consumer's full name, address, date of birth, and Social Security number, or other government-issued identification number. The Bureau notes, however, that on March 21, 2016, the Board, the FDIC, the NCUA, the OCC, and FinCEN issued interagency guidance to clarify that the FinCEN registration requirements apply to the cardholders of general purpose prepaid cards that have the features of an account and are issued by a bank.[503] Specifically, the guidance states that a general purpose prepaid card should be treated as an account if it provides a customer with the ability to reload funds or provides a consumer with access to credit or overdraft features.

Instead of adopting a single standard for consumer registration, the Bureau is adopting several provisions and commentary to clarify when, for purposes of § 1005.18(e)(3)(i), a financial institution can assert that it has not completed its consumer identification and verification process. Together, the new provisions are intended to make clear that a financial institution is only required to extend provisional credit for accounts where it actually knows and has verified the consumer's identity.

Specifically, pursuant to new § 1005.18(e)(3)(ii)(A), a financial institution has not completed its consumer identification and verification process where it has not concluded its consumer identification and verification process, provided the financial institution has disclosed to the consumer the risks of not registering the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix

[500] *See* Study of Prepaid Account Agreements at 16 tbl.4; 2014 CFSI Scorecard at 12.

[501] 79 FR 77102, 77185 (Dec. 23, 2014).

[502] *Id.* The Bureau also wanted to ensure that payroll card and government benefit accounts maintained the same level or limited liability and error resolution protections they had under existing Regulation E.

[503] Bd. of Governors of the Fed. Reserve Sys., Fed. Deposit Ins. Corp., Nat'l Credit Union Admin., Office of the Comptroller of the Currency, Fin. Crimes Enforcement Network, *Interagency Guidance to Issuing Banks Applying Customer Identification Program Requirements to Holders of Prepaid Cards* (Mar. 21, 2016), *available at http://www.federalreserve.gov/bankinforeg/srletters/sr1607.pdf.*

A–7. Next, new § 1005.18(e)(3)(ii)(B) states that a financial institution has not completed the identification and verification process where it has concluded the process but could not verify the consumer's identity, again provided the financial institution has disclosed to the consumer the risks of not registering the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A–7. Although consumers will now receive limited liability and error resolution protections, except provisional credit, before their account is registered with the financial institution, the Bureau believes it is still important that consumers understand that their protections are more limited until they register their accounts. As such, the Bureau is still requiring financial institutions to provide a notice substantially similar to the model notice contained in paragraph (c) of appendix A–7 in order to qualify for § 1005.18(e)(3)(ii)(A) and (B).[504]

Finally, as stated earlier, new § 1005.18(e)(3)(ii)(C) sets forth that a financial institution has not completed the process where the financial institution does not have a consumer identification and registration process by which the consumer can register the prepaid account. To qualify for this provision, a financial institution need not provide the notice in paragraph (c) of appendix A–7 since the consumer cannot register his or her card to obtain provisional credit protections. For the same reason, the Bureau has revised proposed comment 18(e)–4. The proposed comment would have recounted that proposed § 1005.18(e)(3) provided that, in order to take advantage of the exception from the requirement to comply with the limited liability and error resolution requirements, a financial institution would have had to disclose to the consumer the risks of not registering a prepaid account using a notice substantially similar to paragraph (c) of appendix A–7. Since the requirement to provide the notice in paragraph (c) of appendix A–7 now appears in § 1005.18(e)(3)(ii)(A) and (B), but not in § 1005.18(e)(3)(ii)(C), the statement is no longer accurate, and as such has been removed.

With respect to the requirement in proposed § 1005.18(e)(3) that, once an account is verified, financial institutions must provide limited liability and error resolution protections for pre-verification errors, the Bureau has considered the comments objecting to this aspect of the proposal, but is finalizing the general approach in new § 1005.18(e)(3)(iii). To conform the proposed provision to the revisions discussed above (narrowing the scope of the exclusion set forth in final § 1005.18(e)(3)(i)), new § 1005.18(e)(3)(iii) states that, if a consumer's account has been verified, a financial institution must comply with the provisions set forth in § 1005.11(c) in full with respect to any errors that satisfy the timing requirements of § 1005.11, or the modified timing requirements of § 1005.18(e), as applicable, including with respect to errors that occurred prior to verification. Thus, under the revised exclusion approach, once an account has been verified, financial institutions that take longer than 10 business days (or 20 business days, as applicable) to investigate a timely error report must provisionally credit the account with respect to an error, whether it occurred before or after the account was verified, in compliance with the applicable time limitations set forth in § 1005.11(c).

The Bureau agrees with industry commenters that it is unlikely that there will be many unauthorized transfers between the time a consumer acquires a prepaid account and the time the consumer is able to register the account.[505] As such, the Bureau does not believe that a requirement to provide provisional credit protections for pre-registration transactions on a previously unregistered account should place a substantial burden on industry. The Bureau believes, however, that to the extent there are errors prior to verification, these could be significant—they could, for example, involve the initial amount the consumer loaded onto the account at acquisition, which could be a significant sum. Further, the Bureau notes that existing provisions in § 1005.11 already accommodate for potential fraudulent error claims asserted with respect to new accounts. Under both the proposed and final rule, new accounts would receive the benefit of the extended 20-business day investigation timeline set forth in § 1005.11(c)(3)(i).[506] Further, as set forth below, if, at the time the financial institution was supposed to provisionally credit the account, the financial institution had not yet completed its consumer identification and verification process, the financial institution is not required to extend provisional credit to that account.

The Bureau has made two other substantive revisions to address the timing requirements governing a financial institution's obligation to provide limited liability and error resolution rights once a consumer's account has been verified. First, the Bureau has removed a large portion of proposed comment 18(e)–4, which addressed the timelines for a consumer's timely report and a financial institution's timely investigation of an unauthorized transfer for accounts that were previously unverified. Because the final rule requires financial institutions to provide limited liability and error resolution rights to accounts regardless of whether or not they have been verified, the substance of that portion of the proposed comment is no longer applicable.

Second, as referenced above, the Bureau is adopting new § 1005.18(e)(3)(iii)(A) to address circumstances where a financial institution verifies an account *after* a consumer reports an unauthorized transfer. Specifically, new § 1005.18(e)(3)(iii)(A) addresses a situation where, at the time the financial institution is required to provisionally credit the account, the financial institution has not yet completed its identification and verification process with respect to that account. New § 1005.18(e)(3)(iii)(A) states that, under that circumstance, the financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) (45 days) or (3)(ii) (90 days) to investigate and determine whether an error occurred, without provisionally crediting the account. The Bureau believes this clarification is necessary, as without it, a financial institution could be retroactively liable for failing to extend provisional credit in a timely manner pursuant to § 1005.11(c)(1), even though, under new § 1005.18(e)(3)(i), it was not required to extend such credit yet since it had not

[504] The Bureau has revised the content of the notice to reflect the revisions to § 1005.18(e)(3) discussed herein. Those changes are discussed in the section-by-section analysis of appendix A–7 below.

[505] Existing customer identification requirements, such as those imposed under the FinCEN Prepaid Access Rule, limit the functionality of most prepaid accounts prior to registration. Most GPR prepaid cards purchased online or by telephone require full customer identification and verification before a card is mailed to the consumer. For GPR cards purchased at retail, some financial institutions require the cardholder to call or go online to provide identifying information before the card can be used; if the verification process fails, the card functionality is limited to that of a gift card.

[506] The Bureau notes further that Regulation E permits financial institutions to ask for written confirmation of a consumer's oral error notification; if the institution does not receive the confirmation it seeks within 10 business days of an oral notice of error, the financial institution is not required to provide provisional credit with respect to that error claim. *See* § 1005.11(c)(2)(i)(A).

completed its consumer identification and verification process.

In addition to the changes outlined above, the Bureau has made several minor revisions for clarity and conformity with revisions to other parts of the rule.

18(f) Disclosure of Fees and Other Information

The Bureau's Proposal

EFTA section 905(a)(4) requires that financial institutions disclose to consumers, as part of an account's terms and conditions, any charges for EFTs 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 EFTs or for the right to make transfers must be disclosed.

Proposed § 1005.18(f) would have required a financial institution to disclose any fees imposed by a financial institution for EFTs or the right to make such transfers and to 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 would have been required to 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. Proposed § 1005.18(f) would have also required a financial institution to include all of the information required to be disclosed in the long form disclosure and be provided in a form substantially similar to proposed Sample Form A–10(e).

Comments Received

The Bureau received comments from an industry trade association, issuing banks and a credit union, and program managers on this aspect of the proposal. These commenters generally supported full disclosure of all fees, not just fees related to EFTs. However, some expressed concern that proposed § 1005.18(f)'s inclusion of the long form disclosure would be duplicative, given that prepaid accounts would also be subject to other disclosure requirements under Regulation E as well. Specifically, these commenters argued that requiring financial institutions to provide the short form, long form, and initial disclosures is redundant and would result in information overload and consumer confusion. One issuing credit union urged the Bureau not to require financial institutions to include the long form disclosure in the initial disclosures, while an issuing bank suggested that the Bureau require the long form disclosure be delivered only as part of the initial disclosures. See the section-by-section analysis of § 1005.18(b) above for a more detailed discussion of the comments received on the pre-acquisition long form disclosure generally.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing proposed § 1005.18(f), renumbered as § 1005.18(f)(1), generally as proposed, with certain modifications for clarity as explained below. The Bureau is adopting this provision pursuant to its authority under EFTA section 904(c) to adjust the requirement in EFTA section 905(a)(4), which is implemented in existing § 1005.7(b)(5), for prepaid accounts, and its authority under section 1032(a) of the Dodd-Frank Act. The Bureau believes that disclosure of all fees for prepaid accounts will, consistent with EFTA section 902 and section 1032(a) of the Dodd-Frank Act, assist consumers' understanding of the terms and conditions of their prepaid accounts, and 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.

The Bureau believes that it is important that the initial account disclosures provided to consumers list all fees that may be imposed in connection with a prepaid account. The Bureau believes that because consumers will likely reference these disclosures 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 EFTs. In addition, the Bureau believes that most financial institutions are already disclosing all fees in the terms and conditions accompanying prepaid accounts. Regulation DD, which implements the Truth in Savings Act, 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.[507] Because some prepaid accounts as defined by this final rule may not also constitute accounts as defined under Regulation DD (or the corresponding regulations applicable to credit unions),[508] final § 1005.18(f)(1) in conjunction with the long form disclosure requirements in final § 1005.18(b)(4) will ensure that prepaid account consumers receive fee disclosures that include all fees, not just those related to EFTs or the right to make transfers.

Final § 1005.18(f)(1) provides that a financial institution must include, as part of the initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed in its pre-acquisition long form disclosure pursuant to final § 1005.18(b)(4). The Bureau is adopting new comment 18(f)–1, which clarifies that a financial institution may, but is not required to, disclose the information required by final § 1005.18(b)(4) in accordance with the formatting, grouping, size and other requirements set forth in final § 1005.18(b) for the long form disclosure as part of its initial disclosures provided pursuant to § 1005.7; a financial institution may choose to do so, however, in order to satisfy other requirements in final § 1005.18.[509] The Bureau believes these revisions streamline the proposed language and make clearer the Bureau's intent as to when the long form disclosure itself must be provided.

Relatedly, the Bureau is adopting new § 1005.18(f)(2) to avoid any uncertainty as to when a change-in-terms notice is required. Specifically, this provision makes clear that the change-in-terms notice provisions in § 1005.8(a) apply to any change in a term or condition that is required to be disclosed under § 1005.7 or final § 1005.18(f)(1). New § 1005.18(f)(2) also provides, however, that if a financial institution discloses the amount of a third-party fee in its pre-acquisition long form disclosure pursuant to final § 1005.18(b)(4)(ii) and initial disclosures pursuant to final § 1005.18(f)(1), the financial institution is not required to provide a change-in-terms notice solely to reflect a change in that fee amount imposed by the third party.

New § 1005.18(f)(2) also states that if a financial institution provides pursuant to § 1005.18(f)(1) the Regulation Z disclosures required by § 1005.18(b)(4)(vii) for an overdraft credit feature, the financial institution is not required to provide a change-in-terms notice solely to reflect a change in the fees or other terms disclosed therein.[510] New comment 18(f)–2

[507] Regulation DD § 1030.4(b)(4).

[508] *See* 12 CFR part 707.

[509] See, *e.g.,* final § 1005.18(b)(1)(ii) regarding the retail location exception.

[510] The Bureau notes that Regulation Z, 12 CFR 1026.60(e)(4) requires that the disclosures given pursuant to § 1026.60(e)(1), which are required to be provided when an overdraft credit feature is offered in connection with a prepaid account

explains that the exception provided in new § 1005.18(f)(2) does not extend to any finance charges imposed on the prepaid account as described in final Regulation Z § 1026.4(b)(11)(ii) in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61 that are required to be disclosed pursuant to § 1005.18(b)(4)(ii). This comment also references comment 18(b)(4)(ii)–1. See the section-by-section analysis of § 1005.18(b)(4)(vii) above for a detailed discussion of this disclosure requirement in the final rule.

18(f)(3) Disclosures on Prepaid Account Access Devices

The Bureau proposed § 1005.18(b)(7) to require a financial institution to disclose on the prepaid account device itself the name of the financial institution, a Web site URL, and a telephone number that a consumer can use to access information about the prepaid account. Proposed § 1005.18(b)(7) would have provided that, if a financial institution did not provide a physical access device in connection with a prepaid account, this disclosure would have been required to appear at the URL or other entry point a consumer must visit to access the prepaid account electronically. Proposed § 1005.18(b)(7) would have also stated that 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 would not constitute a disclosure on the access device. Proposed comment 18(b)(7)–1 would have clarified 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 received no comments regarding these proposed requirements for disclosures on prepaid account devices. The Bureau is thus finalizing proposed § 1005.18(b)(7), renumbered as § 1005.18(f)(3), substantially as proposed, with modifications as to the location of this disclosure at an electronic entry point to the account. The Bureau has also removed from the regulatory text the explanation regarding disclosures made on an accompanying document and included it in final comment 18(f)–3, as discussed below. The Bureau is finalizing this provision pursuant to its authority under EFTA sections 904(a) and (c), and 905(a), and section 1032(a) of the Dodd-Frank Act, because it will assist consumers in better understanding the terms and conditions of their prepaid accounts, even after they have acquired the account.

The Bureau is also finalizing proposed comment 18(b)(7)–1, renumbered as comment 18(f)–3, with modifications to clarify the examples for why a consumer might use the information disclosed on an access device to contact the financial institution. Specifically, this comment now clarifies that the financial institution must provide this information to allow consumers to, for example, contact the financial institution to learn about the terms and conditions of the prepaid account, obtain prepaid account balance information, request a copy of transaction history pursuant to final § 1005.18(c)(1)(iii) if the financial institution does not provide periodic statements pursuant to § 1005.9(b), or notify the financial institution when the consumer believes that an unauthorized EFT occurred as required by § 1005.7(b)(2) and final § 1005.18(d)(1)(ii). Final comment 18(f)–3 also clarifies that 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. 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, even if they are not in the location where they retained the disclosures or are unable to access disclosures via the internet.

18(g) Prepaid Accounts Accessible by Hybrid Prepaid-Credit Cards

The Bureau's Proposal

The proposal would have added proposed § 1005.18(g)(1) to set forth timing rules related to when a credit card plan under Regulation Z could be linked to a prepaid account. The proposal also would have added proposed § 1005.18(g)(2) to set forth rules related to the terms applicable to a prepaid account when a credit card plan could be is linked to a prepaid account. For the reasons discussed below, the Bureau has not adopted proposed § 1005.18(g)(1). The Bureau is finalizing proposed § 1005.18(g)(2) as § 1005.18(g) with revisions, as discussed below. For organizational purposes, proposed § 1005.18(g)(2) is discussed first, followed by a discussion of proposed § 1005.18(g)(1).

Proposed § 1005.18(g)(2) would have set forth rules related to the terms applicable to a prepaid account when a credit card plan could be linked to a prepaid account. Specifically, proposed § 1005.18(g)(2) would have provided 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, 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.

The proposal would have added proposed comment 18(g)–1 to cross-reference provisions in Regulation Z that would have provided guidance on when a program would have constituted a credit plan under the proposal (*see* proposed Regulation Z § 1026.2(a)(20) and proposed Regulation Z comment 2(a)(20)–2.ii) and would have provided guidance on when an access device for a prepaid account would have been a credit card under the proposal (*see* existing Regulation Z § 1026.2(a)(15)(i), and proposed Regulation Z comment 2(a)(15)–2.i.F).

Proposed comment 18(g)–2.i would have provided guidance on the applicability of the restriction in proposed § 1005.18(g)(2). Specifically, proposed comment 18(g)–2.i would have explained 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, a financial institution that establishes or holds such a prepaid

pursuant to § 1005.18(b)(4)(vii), must be accurate as of the date of printing. A variable APR is accurate if it was in effect within 30 days before printing.

account would have been prohibited from applying 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 would have explained that proposed § 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 have provided 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 would have included 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 have cross-referenced proposed Regulation Z § 1026.4(b)(2) and proposed Regulation Z comment 4(b)(2)–1.iii and iv, which would have provided additional guidance on fees that would have related to an extension of credit, carrying a credit balance, or credit availability.

Proposed comment 18(g)–2.iii also would have provided 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 have related to an extension of credit, carrying a credit balance, or credit availability. The proposed examples would have included (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 would have provided examples that illustrate the prohibition in proposed § 1005.18(g)(2).

Comments Received

The Bureau did not receive any industry comments on this specific aspect of the proposal. One consumer group commenter expressed concern that under proposed comment 18(g)–2.i, a financial institution may offer different terms on two separate card programs, one that has the potential for a credit feature accessed by prepaid card that is a credit card and one that does not. This commenter expressed concern that a financial institution could steer consumers who want to activate such a credit feature to an entirely different prepaid account that has additional fees or other features, including one that is not even offered to the general public, but is only offered to consumers who have asked about or likely to opt in to such a credit feature.

This commenter also noted the partial list of terms and conditions set forth in proposed comment 18(g)–2 where a financial institution under the proposal would not have been able to vary these terms and conditions between consumers who do and do not link a credit feature to the prepaid account that would make the prepaid card into a credit card. The commenter urged the Bureau to add load or transfer fees to this list of fees. The commenter believed that a financial institution should not be permitted to charge a higher or lower fee on the prepaid account for loading funds if the consumer links the credit feature to his or her prepaid account.

The Final Rule

The Bureau is finalizing proposed § 1005.18(g)(2), renumbered as § 1005.18(g), with revisions for consistency with final Regulation Z §§ 1026.4 and 1026.61.[511] The Bureau is not adopting proposed § 1005.18(g)(1), for reasons discussed below. New § 1005.18(g)(1) provides that except as provided in new § 1005.18(g)(2), with respect to a prepaid account program where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by new Regulation Z § 1026.61, a financial institution must provide to any prepaid account without a covered separate credit feature the same account terms, conditions, and features that it provides on prepaid accounts in the same prepaid account program that have such a credit feature. New § 1005.18(g)(2) provides that a financial institution is not prohibited under new § 1005.18(g)(1) from imposing a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge that it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature. As discussed in the section-by-section analysis of Regulation Z § 1026.4(b)(11)(ii) below, new Regulation Z § 1026.4(b)(11)(ii) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61, any fee or charge imposed on the asset feature of the prepaid account is a finance charge to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card.

As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new Regulation Z § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new Regulation Z § 1026.61 and a credit card under final Regulation Z § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau is adopting new § 1005.18(g) 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

[511] The Regulation Z proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed § 1005.18(g)(2) would have provided that where a credit card plan subject to Regulation Z that is accessed by such an account number may be offered at any point to the consumer, 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)–1 would have discussed when these account numbers were credit cards under Regulation Z. Proposed comment 18(g)–2 would have provided guidance how proposed § 1005.18(g)(2) would have applied to credit card plans accessed by these account numbers. For the reasons set forth in the section-by-section analysis of Regulation Z § 1026.2(a)(15)(i) below, the final rule does not adopt the provisions related to the account numbers that would have made these account numbers into credit cards under Regulation Z. Thus, provisions in proposed § 1005.18(g)(2) and proposed comments 18(g)–1 and –2 related to these account numbers have not been adopted.

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.'' [512] 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 one-time debit card transactions by providing consumers who do not opt in with less favorable terms, conditions, or features than consumers who do opt in.'' [513]

The Bureau believes that a similar requirement should be extended here for similar reasons. As discussed in the section-by-section analysis of Regulation Z § 1026.12(a)(1) below, a covered separate credit feature may be added to a previously issued prepaid card only upon the consumer's application or specific request and only in compliance with new Regulation Z § 1026.61(c). New Regulation Z § 1026.61(c) requires that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

The Bureau believes some institutions could otherwise effectively compel the consumer to apply for or request a covered separate credit feature as described above by providing consumers who do not make such an application or request with less favorable terms, conditions, or features than consumers who do make such applications or requests. For example, an institution could waive the monthly fee for holding a prepaid account for consumers who apply for or request that a covered separate credit feature be connected to the prepaid account, but not waive the monthly fee for consumers who do not make such an application or request.

The Bureau is revising the commentary to § 1026.18(g) from the proposal to be consistent with new Regulation Z §§ 1026.4(b)(11)(ii) and 1026.61. New comment 18(g)–1 provides that new Regulation Z § 1026.61 defines the term covered separate credit feature accessible by a hybrid prepaid-credit card. The Bureau also is adding new comment 18(g)–2.i to provide that new Regulation Z § 1026.61(a)(5)(ii) defines the term ''asset feature.'' Under new Regulation Z § 1026.61(a)(5)(ii), the term ''asset feature'' means an asset account that is a prepaid account, or an asset subaccount of a prepaid account. New comment 18(g)–2.ii provides that new § 1005.18(g) applies to account terms, conditions, and features that apply to the asset feature of the prepaid account. New § 1005.18(g) does not apply to the account terms, conditions, or features that apply to the covered separate credit feature, regardless of whether it is structured as a separate credit account or as a credit subaccount of the prepaid account that is separate from the asset feature of the prepaid account.

The final rule moves proposed comment 18(g)–2.i to comment 18(g)–3 and revises it to be consistent with new Regulation Z § 1026.61. New comment 18(g)–3 provides that under new § 1005.18(g), a financial institution may offer different terms on different prepaid account programs. For example, the terms may differ between a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program, and a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts. The Bureau notes concerns expressed by the consumer group commenter that financial institutions could steer consumers who want to activate a credit feature accessible by a prepaid card that is a credit card to an entirely different prepaid account that has additional fees or other features, including one that is not even offered to the general public, but is only offered to consumers who have asked about or likely to opt in to such a credit feature. Nonetheless, at this time, the Bureau retains the flexibility for financial institutions to impose different fees on different prepaid account programs. The Bureau will monitor whether financial institutions are structuring prepaid account programs in an attempt to evade the provisions in new § 1005.18(g).

The final rule moves proposed comment 18(g)–2.ii to new comment 18(g)–4 and revises it to be consistent with new Regulation Z § 1026.61. New comment 18(g)–4 provides that account terms, conditions, and features subject to new § 1005.18(g) include, but are not limited to (1) interest paid on funds deposited into the asset feature of the prepaid account, if any; (2) fees or charges imposed on the asset feature of the prepaid account; [514] (3) the type of access device provided to the consumer. For instance, an institution may not provide a PIN-only card on prepaid accounts without a covered separate credit feature that is accessible by a hybrid prepaid-credit card, while providing a prepaid card with both PIN and signature-debit functionality for prepaid accounts in the same prepaid account program with such a credit feature; (4) minimum balance requirements on the asset feature of the prepaid account; or (5) account features offered in connection with the asset feature of the prepaid account, such as online bill payment services.

The final rule moves proposed comment 18(g)–2.iii through iv to new comment 18(g)–5 and revises it to be consistent with final Regulation Z §§ 1026.4 and 1026.61. New comment 18(g)–5.i provides that with respect to a prepaid account program where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by new Regulation Z § 1026.61, new § 1005.18(g) only permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program that do not have a such a credit feature. This comment explains that new § 1005.18(g) prohibits a financial institution from imposing a lower fee or charge on prepaid accounts with a covered separate credit feature than the amount of a comparable fee or charge it charges on prepaid accounts in the same prepaid account program without such a credit feature. This comment also states that with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61, a fee or charge imposed on the asset feature of the prepaid account generally is a finance charge under final Regulation Z § 1026.4(b)(11)(ii) to the extent that the amount of the fee or

[512] See existing § 1005.17(b)(3), which was numbered as § 205.17(b)(3) in the Board's rules.

[513] 74 FR 59033, 59044 (Nov. 17, 2009).

[514] *See* new comment 18(g)–5 discussed below for additional guidance on how new § 1005.18(g) applies to fees or charges imposed on the asset feature of the prepaid account.

charge exceeds the amount of a comparable fee or charge imposed on prepaid accounts in the same prepaid account program that do not have such a credit feature.

As discussed in more detail below, new comment 18(g)–5.ii through iv also provides illustrations of how new § 1005.18(g) applies to fees or charges imposed on the asset feature of a prepaid account with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61.

Transaction Fees To Access Prepaid Account Funds

New comment 18(g)–5.ii provides three examples that illustrate how new § 1005.18(g) applies to per transaction fees for each transaction to access funds available in the asset feature of the prepaid account. For example, assume that a consumer has selected a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered. For prepaid accounts without such a credit feature, the financial institution charges $0.50 for each transaction conducted that accesses funds available in the prepaid account. For prepaid accounts with a credit feature, the financial institution also charges $0.50 on the asset feature for each transaction conducted that accesses funds available in the asset feature of the prepaid account. New comment 18(g)–5.ii.A provides that for purposes of new § 1005.18(g), the financial institution is imposing the same fee for each transaction that accesses funds in the asset feature of the prepaid account, regardless of whether the prepaid account has a covered separate credit feature accessible by a hybrid prepaid-credit card. New comment 18(g)–5.ii.A also states that with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in new Regulation Z § 1026.61, the $0.50 per transaction fee imposed on the asset feature for each transaction that accesses funds available in the asset feature of the prepaid account is not a finance charge under new § 1026.4(b)(11)(ii). This comment cross-references new Regulation Z § 1026.4(b)(11)(ii) and comment 4(b)(11)(ii)–1 for a discussion of the definition of finance charge with respect to fees or charges imposed on the asset feature of a prepaid account with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61.

As set forth in new comment 18(g)–5.ii.B, if in the above example with respect to prepaid accounts with a covered separate credit feature, the financial institution imposes a $1.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account for prepaid accounts with a covered separate credit feature, the financial institution is permitted to charge a higher fee under new § 1005.18(g)(2) on prepaid accounts with a covered separate credit feature than it charges on prepaid accounts without such a credit feature. The $0.75 excess in this example is a finance charge under new Regulation Z § 1026.4(b)(11)(ii).

Nonetheless, as discussed in new comment 18(g)–5.ii.C, if in the above example for prepaid accounts with a covered separate credit feature, the financial institution imposes a $0.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account, the financial institution is in violation of new § 1005.18(g) because it is imposing a lower fee on the asset feature of a prepaid account with a covered separate credit feature than it imposes on prepaid accounts in the same program without such a credit feature.

Fees Related to Covered Separate Credit Features

New comment 18(g)–5.iii and iv provides additional guidance on the type of fees that are considered comparable fees to fees imposed on prepaid accounts for credit extensions from covered separate credit features accessible by hybrid prepaid-credit cards. This guidance is consistent with the guidance provided in Regulation Z comment 4(b)(11)(ii)–1.ii and iii with respect to the definition of finance charge in new Regulation Z § 1026.4(b)(11)(ii).

In developing these rules, as set forth in new Regulation Z § 1026.61(a)(2)(i)(B) and comment 61(a)(2)–4.ii, the Bureau was conscious that there were two potentially distinct types of credit extensions that could occur on a covered separate credit feature. The first type of credit extension is where the hybrid prepaid-credit card accesses credit in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second type of credit extension is where a consumer makes a standalone draw or transfer of credit from the covered separate credit feature, outside the course of any transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Because the two scenarios involve different sets of activities, the range of fees that are likely to be triggered is also likely to be different. New comment 18(g)–5.iii and iv therefore provides separate guidance on the comparable fees under new § 1005.18(g) with respect to each of the two types of credit extensions.

Credit extensions from the covered separate credit feature within the course of a transaction. Comment 18(g)–5.iii provides guidance for credit extensions where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Specifically, comment 18(g)–5.iii provides that where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing such a transaction, any per transaction fees imposed on the asset feature of the prepaid account, including load and transfer fees, with such a credit feature should be compared to the per transaction fees for each transaction to access funds in the asset feature of a prepaid account that is in the same prepaid account program but does not have such a credit feature. Thus, per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of new § 1005.18(g).

To illustrate these principles, comment 18(g)–5.iii sets forth a set of several examples explaining how new § 1005.18(g) applies in situations in which credit is accessed from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

New comment 18(g)–5.iii.A provides the following example: Assume that a prepaid account issuer charges $0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature. Also,

assume that the prepaid account issuer charges $0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, for purposes of new § 1005.18(g), the financial institution is imposing the same fee for each transaction it pays, regardless of whether the transaction accesses funds available in the asset feature of the prepaid accounts without a covered separate credit feature, or is paid from credit from a covered separate credit feature in the course of authorizing, settling or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Also, for purposes of new Regulation Z § 1026.4(b)(11)(ii), the $0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge.

As described in new comment 18(g)–5.iii.B, if the prepaid account issuer in the above example instead charged $1.25 on the asset feature of a prepaid account for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction, the financial institution is permitted to charge the higher fee under new § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction that accesses funds available in the asset feature of the prepaid accounts without such a credit feature. The $0.75 excess is a finance charge under new Regulation Z § 1026.4(b)(11)(ii).

Nonetheless, as discussed in new comment 18(g)–5.iii.C, if in the above example, the financial institution imposes $0.25 on the asset feature of the prepaid account for each transaction conducted where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction, the financial institution is in violation of new § 1005.18(g) because it is imposing a lower fee on the asset feature of a prepaid account with a covered separate credit feature than the amount of the comparable fee it imposes on prepaid accounts in the same program without such a credit feature.

Comment 18(g)–5.iii.D provides another example. Assume a prepaid account issuer charges $0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature. Assume also that the prepaid account issuer charges both a $0.50 per transaction fee and a $1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.,* a combined fee of $1.75 per transaction) must be compared to the $0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. The financial institution is permitted to charge a higher fee under new § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction that accesses funds available in the asset feature of the prepaid accounts without such a credit feature. The $1.25 excess is a finance charge under new Regulation Z § 1026.4(b)(11)(ii).

Comment 18(g)–5.iii.E provides the last in this set of examples. Assume a prepaid account issuer charges $0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature, and charges a load fee of $1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature. Assume also that the prepaid account issuer charges both a $0.50 per transaction fee and a $1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.,* a combined fee of $1.75 per transaction) must be compared to the per transaction fee (*i.e.,* the fee of $0.50) to access funds available in the asset feature of the prepaid accounts on a prepaid account without a covered separate credit feature. Per transaction fees for a transaction that is conducted by drawing funds into a prepaid account from some other source (*i.e.,* the fee of $1.25) are not comparable for purposes of new § 1005.18(g). The financial institution is permitted to charge a higher fee under new § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction to access funds available in the asset feature of the prepaid accounts without such a credit feature. The $1.25 excess is a finance charge under new Regulation Z § 1026.4(b)(11)(ii).

For the reasons set forth in more detail in the section-by-section analysis of Regulation Z § 1026.4(b)(11)(ii) below, the Bureau believes that the above standard for determining comparable fees with respect to fees or charges imposed on the asset feature of prepaid accounts accessible by hybrid prepaid-credit cards will help prevent evasion of the rules set forth in the final rule with respect to hybrid prepaid-credit cards. The Bureau believes that many prepaid cardholders who wish to use covered separate credit features may not have other deposit accounts or savings accounts from which they can transfer funds to prevent an overdraft on the prepaid account in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers to prevent an overdraft on the prepaid account. As a result, the Bureau does not believe that a per transaction fee for credit drawn or transferred from a covered separate credit feature accessible by a hybrid prepaid-credit card during the course of a transaction should be allowed to be compared with a per transaction fee for a service that many prepaid cardholders who wish to use covered separate credit features may not be able to use. For this reason, the Bureau believes that it is appropriate to limit the comparable fee in this case to per transaction fees imposed on prepaid accounts for transactions that access funds in the prepaid account in the same prepaid account program that does not have a covered separate credit feature. All prepaid accountholders can use prepaid accounts to make transactions that access available funds in the prepaid account, so these types of transactions will be available to all prepaid accountholders.

Credit extensions from a covered separate credit feature outside the course of a transaction. Comment 18(g)–5.iv provides guidance for credit extensions where a consumer draws or transfers credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted

with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

Comment 18(g)–5.iv provides that load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction are compared only with fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of new § 1005.18(g).

Comment 18(g)–5.iv provides examples to illustrate this guidance. The first example set forth in comment 18(g)–5.iv.A relates to loads to transfer funds from a non-covered separate credit feature. Specifically, assume a prepaid account issuer charges a $1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (*i.e.,* the fee of $1.25) are compared with the fees to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature (*i.e.,* the fee of $0). Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (*i.e.,* the fee of $1.25) is not comparable for purposes of new § 1005.18(g). In this case, the financial institution is permitted to charge a higher fee under new § 1005.18(g) for transactions that access the covered separate credit feature on prepaid accounts with a credit feature than the amount of the comparable fee it charges on prepaid accounts in the same program without such a credit feature. The $1.25 fee imposed on the asset feature of the prepaid account with a separate credit feature is a finance charge under new Regulation Z § 1026.4(b)(11)(ii).

As set forth in comment 18(g)–5.iv.B, a second example relates to a one-time transfer of funds from a separate asset account. In this second example, assume that a prepaid account issuer charges a $1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (*i.e.,* the fee of $1.25) are compared with the fees to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature (*i.e.,* the fee of $0). Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (*i.e.,* the fee of $1.25) is not comparable for purposes of new § 1005.18(g). In this case, the financial institution is permitted to charge a higher fee under new § 1005.18(g) for transactions that access the covered separate credit feature on prepaid accounts with a credit feature than the amount of the comparable fee it charges on prepaid accounts in the same program without such a credit feature. The $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge under new Regulation Z § 1026.4(b)(11)(ii).

For the reasons set forth in more detail in the section-by-section analysis of Regulation Z § 1026.4(b)(11)(ii) below, the Bureau believes that many prepaid accountholders who wish to use covered separate credit features may not have other asset accounts, such as checking accounts or savings accounts, or other credit accounts, from which they can draw or transfer asset funds or credit for deposit into the prepaid account outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. As a result, the Bureau does not believe that load or transfer fees for credit from a covered separate credit feature accessible by a hybrid prepaid-credit card outside the course of a transaction should be allowed to be compared with a load or transfer fees from an asset account, or non-covered separate credit feature, outside the course of a transaction. For this reason, the Bureau believes that it is appropriate to limit the comparable fee in this case to fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. The Bureau believes that such direct deposit methods commonly are offered on most types of prepaid accounts and that most prepaid accountholders who wish to use covered separate credit feature are able to avail themselves of these methods.[515]

Proposed § 1005.18(g)(1)

The proposal would have added proposed § 1005.18(g)(1) that generally would have restricted 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 days after the prepaid account has been registered. Specifically, proposed § 1005.18(g)(1)(i) would have restricted 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 days after the prepaid accounts have been registered. For purposes of proposed § 1005.18(g)(1), the term *solicitation* would have meant 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[516] 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 have restricted 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 days

[515] The Bureau understands that prepaid account issuers currently offering overdraft services condition consumer eligibility on receipt of a regularly-occurring direct deposit in excess of a specified threshold.

[516] 15 U.S.C. 1681a(l).

after the prepaid accounts have been registered. Proposed § 1005.18(g)(1)(iii) would have restricted 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 days after the prepaid account has been registered. Proposed § 1005.18(g)(1)(iii) was 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 § 1005.18(g)(1) would have complemented a similar proposed provision in Regulation Z, proposed § 1026.12(h) (renumbered as new § 1026.61(c) in the final rule), which would have required credit card issuers to wait at least 30 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.

In the proposal, the Bureau noted that proposed § 1005.18(g)(1) and proposed Regulation Z § 1026.12(h) would have overlapped 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 have been a ''card issuer'' under existing Regulation Z § 1026.2(a)(7) [517] and the Bureau proposed that both the requirements of proposed Regulation Z § 1026.12(h) and proposed Regulation E § 1005.18(g)(1) would have applied to the financial institution who also is a card issuer. Nonetheless, the Bureau intended proposed Regulation E § 1005.18(g)(1) and proposed 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) would have been required to comply with proposed Regulation Z § 1026.12(h). In addition, the financial institution that holds the prepaid account would have been required to comply with proposed § 1005.18(g)(1).

The Bureau has not finalized proposed § 1005.18(g)(1) because the Bureau believes the amendment is unnecessary in light of other revisions in the final rule, as discussed below. As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.2(a)(15)(i) below, the Regulation Z proposal provided that the term ''credit card'' would have included 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. For the reasons set forth in the section-by-section analysis of Regulation Z § 1026.2(a)(15)(i) below, the Bureau has decided not to adopt the provisions related to the account numbers that would have made these account numbers into credit cards under Regulation Z. Thus, the Bureau believes that the provisions in proposed § 1005.18(g)(1) are not needed to address covered separate credit features accessible by hybrid prepaid-credit cards because those credit features are addressed in new Regulation Z § 1026.61(c).

As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new Regulation Z § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new Regulation Z § 1026.61 and a credit card under final Regulation Z § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New Regulation Z § 1026.61(c) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

With respect to a hybrid prepaid-credit card, the financial institution would be a ''card issuer'' under final Regulation Z § 1026.2(a)(7).[518] The Bureau does not believe that it is necessary to include similar provisions to proposed § 1005.18(g)(1) in Regulation E that would cover a financial institution that offers a hybrid prepaid-credit card that accesses a covered separate credit feature. In this case, the financial institution is a card issuer under final Regulation Z § 1026.2(a)(7) and is covered by the provisions in Regulation Z that apply to card issuers, including new Regulation Z § 1026.61(c).

18(h) Effective Date

The Bureau's Proposal

The Bureau proposed, in general, a nine-month effective date for its rulemaking on prepaid accounts. Specifically, proposed § 1005.18(h)(1) would have stated that, except as provided in proposed § 1005.18(h)(2), the requirements of EFTA and Regulation E, as modified by proposed § 1005.18, would have applied to prepaid accounts nine months following the publication of the Bureau's final rule

[517] 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).

[518] Under the final rule in Regulation Z comment 2(a)(7)–1.ii, with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61where that credit feature is offered by an affiliate or business partner of the prepaid account issuer as those terms are defined in new Regulation Z § 1026.61, the affiliate or business partner offering the credit feature is an agent of the prepaid account issuer and thus, is itself a card issuer with respect to the hybrid prepaid-credit card. In this case, both the person offering the covered separate credit feature and the financial institution issuing the prepaid card are card issuers under final Regulation Z § 1026.2(a)(7).

in the **Federal Register**. This would have included the disclosure requirements in proposed § 1005.18(b) and (f)(2), and would have applied 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 have generally made applicable to all prepaid accounts the requirements of EFTA and Regulation E, as modified by the provisions of proposed § 1005.18, including those governing disclosures, access to prepaid account information, limited liability and error resolution, among others, after nine months. For instance, the new disclosure requirements would have applied immediately at the nine-month mark for disclosures and other information made available to consumers online or by telephone.

However, this first proposed effective date would not have required immediate destruction or removal of previously printed materials because it would have only required packages, cards, and other materials printed on or after the nine month date to comply with the rule's disclosure requirements in proposed § 1005.18(b) and (f)(2). Instead, the Bureau proposed a delayed effective date for certain additional packaging-related changes, which would have been 12 months following the publication of the final rule in the **Federal Register**. This second date, in proposed § 1005.18(h)(2), would have required full compliance with the rule's disclosure requirements and would have prohibited 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 had to remove from retail store shelves and other distribution channels any prepaid accounts with disclosures not fully in compliance with the rule.

For prepaid account packaging, access devices, and other printed materials created prior to this first effective date, the Bureau believed that nothing it proposed would trigger requirements under existing Regulation E to provide a change-in-terms notice insofar as the proposal would not have required increased fees, liability, or fewer types of available EFTs for consumers.[519] If, however, financial institutions wished to avail themselves of the more limited error resolution or limited liability requirements for existing unregistered prepaid accounts where their existing terms provide greater protections, the Bureau noted that a change-in-terms notice might be required.

The Bureau also noted that, independent of the proposed rule, financial institutions that wish to make substantive changes to prepaid account fees or terms are often required by other laws 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. Such laws may include operative state consumer protection and contract laws.

Comments Received

The Bureau received many comments from industry, including trade associations, issuing banks, credit unions, program managers, payment networks, a payment processor, and a law firm writing on behalf of a coalition of prepaid issuers, arguing that the proposed nine- and 12-month compliance periods would be insufficient to implement the changes that would be required under the proposal.

These commenters argued that, due to the perceived complexity of the proposal, industry would need more time to review the requirements of the final rule and implement extensive system and operational changes, which would include, among other things, revising internal procedures and training staff. Commenters recommended a range of time periods, starting at 12 months but generally converging around 18 to 24 months. One trade association, however, said that it found the proposed nine- and 12-month effective dates reasonable. Commenters stated that the rule will affect the entire prepaid industry at the same time and will require coordination and planning among all industry participants, including third-party vendors. They explained that high demand for packaging manufacturers would strain resources and suppliers and cause significant delays in the production process. Industry commenters also expressed concern about the costs and waste associated with pulling and replacing packaging with non-compliant disclosures. These commenters stated that a longer compliance period would ensure that industry has time to comprehensively implement the required changes, with minimal business disruption, and avoid the destruction of millions of card packages. These commenters also urged the Bureau to consider holiday season system freezes and peak time demands when setting an effective date for the final rule, as well as impacts related to the roll-out of EMV-enabled cards and POS terminals. These commenters explained that, as an industry practice, various entities involved in the prepaid value chain observe a ''freeze period'' during which no major system updates should take place, often due to increased volumes during certain times of the year. The exact periods may differ for financial institutions, program managers, data processors, and retail stores, but combined generally span October through April.

Several commenters explained that industry would need more time than the Bureau proposed to implement necessary system and operational changes, in order to comply with specific aspects of the proposal. For example, with respect to disclosures, several commenters stated that the proposed requirements would, among other things, require industry to design new disclosures that would appear on packaging materials, which would need to be newly produced, and on Web sites and mobile applications, which would need to be redesigned and reprogrammed. These commenters explained that providing disclosures prior to the acquisition of government benefit accounts, payroll card accounts, and campus cards would require revisions to current procedures, training of third parties and employees, enhanced monitoring of third-party practices, and the removal and replacement of preprinted card stock. To help mitigate the costs that would be associated with destroying unused packaging material, several credit unions and credit union trade associations urged the Bureau to consider a compliance period driven by the expiration date on the card stock. These commenters explained that some credit unions purchase card stock four years in advance of the last expiration date, as cards are sold with a three-year expiration date range. One industry trade association suggested that the Bureau grant a safe harbor for any prepaid account packaging manufactured in the ordinary course of business within 90 days of publication of the final rule in the **Federal Register**. Another industry trade association suggested that the Bureau grant an exemption for cards issued before a certain date, allow financial institutions to exhaust the card stock and notify consumers in a reasonable manner that additional rights apply to the existing

[519] *See* § 1005.8(a) and 12 CFR 1030.5(a)(1).

cards, or impose a ''manufacture date'' after which all cards manufactured must comply with the final rule. A payment network suggested that the Bureau grant a safe harbor and allow financial institutions to keep existing physical cards stocked at retail locations and notify consumers of any changes either by sending change-in-terms notices or by obtaining consumer consent upon registration. This commenter added that this approach would both cure outdated pricing on card packaging and also allow financial institutions to introduce new features that have a fee.

Regarding the proposed access to account information requirements, several commenters stated that displaying the proposed summary totals of fees, deposits, and debits for the prior calendar month and the calendar year to date in proposed § 1005.18(c)(4) would require financial institutions to map the fee information for each cardholder, redesign online transaction history pages, and change the formatting for paper statements. With respect to the proposed requirement to provide 18 months of account transaction history under the periodic statement alternative in proposed § 1005.18(c)(1)(ii) and (iii), several industry commenters stated that making the changes necessary to provide 18 months of account history nine months after publication of the final rule would be problematic and time-consuming. These commenters explained that financial institutions may not currently have 18 months of account transaction history for prepaid accounts and, if they do, older information is likely archived and not easily accessible. These commenters also explained that financial institutions would need to redesign systems to be capable of supporting 18 months of account transaction history and would need to train staff on the new systems and capabilities.

Several commenters stated that submitting prepaid account agreements to the Bureau and posting agreements on the issuer's Web site pursuant to proposed § 1005.19(b) and (c), respectively, would require financial institutions to create a process for updating agreements on a quarterly basis, develop a periodic monitoring process to ensure accuracy of these agreements, create a location on their Web sites for the posting of agreements, and develop a process for maintaining inventory of these agreements.

Regarding the proposed changes to the treatment of overdraft services and certain other credit plans for prepaid accounts, several industry commenters explained that, to avoid coverage under the rule as proposed for inadvertent overdrafts such as those resulting from force pay transactions, financial institutions would either need to block authorization requests where the final transaction amount is not known in advance (such as gasoline purchases at automated fuel dispensers) and require cardholders to pay in advance for every transaction that could potentially result in an inadvertent overdraft, or add transaction audit steps for merchant-initiated transactions to ensure that merchants have a current, accurate authorization before any prepaid card transaction is processed. One program manager that currently offers overdraft services on some of its prepaid accounts requested a compliance period of at least 24 months to develop and test new systems for delivering the required disclosures (*e.g.,* periodic statements for prepaid cards that are also deemed a credit card) and to perform underwriting for complying with ability-to-pay requirements under Regulation Z. For existing prepaid accounts that offer overdraft services, this commenter urged the Bureau to establish at least a 6-month period during which overdraft services could continue to be offered without being subject to the final rule, so that consumers could be given sufficient notice regarding the changes to allow them to make alternative financial arrangements as necessary. This commenter explained, however, that if the Bureau established an effective date for a period longer than nine months (such as 24 months), the 6-month wind-down period would be less important.

Several commenters suggested modifications to the proposed effective dates that they believed would reduce the potential compliance burden on industry. A few industry commenters suggested a longer compliance period for products sold at retail and for portions of the rule that require system changes. One payment network and a law firm writing on behalf of a coalition of prepaid issuers urged the Bureau to allow consumers to continue using their existing prepaid cards until the card expires, which the payment network believed would allow financial institutions to avoid destroying millions of cards consistent with the spirit of what is commonly referred to as the ''ECO Card Act.'' [520] For existing vendor contracts that may be in violation of the final rule, one state employment department and an industry commenter urged the Bureau to either grandfather in existing contracts until they expire, or provide a reasonable timeframe in which to amend or rebid the contracts. One industry commenter requested that the final rule clearly state when revisions to Regulation Z will become effective to avoid confusion for financial institutions that are also subject to 32 CFR part 232, the regulation implementing the MLA,[521] which the DOD proposed shortly before the Bureau released its proposed rulemaking on prepaid accounts.

The Bureau received few comments from consumer groups regarding this portion of the proposal. One consumer group suggested that the Bureau could allow financial institutions to implement the access to account information requirements set forth in § 1005.18(c) on a rolling basis. This commenter explained that under such scenario, a financial institution would not be required to provide account information from prior to the final rule's effective date, but instead could begin accumulating it on the effective date until the financial institution has the information needed for the full time periods required by the rule.

The Final Rule

Upon consideration of the comments received, the Bureau believes it is appropriate to provide a longer implementation period in light of some of the logistical issues raised by industry. The Bureau believes it is important to ensure that industry has sufficient time to implement the changes required by this final rule, but it is also important not to delay the important consumer protections the rule sets forth any longer than necessary. The Bureau has thus extended the general effective date of this final rule from the proposed nine months

[520] Public Law 111–209 (2010). This act amended the statutory date by which the Board's regulations implementing of the gift card provisions of the Credit CARD Act were required to become effective. The Credit CARD Act had originally called for an effective date of August 22, 2010 for the Gift Card Rule; the ECO Card Act, which was enacted on July 27, 2010, extended that effective date. Specifically, the ECO Card Act extended the effective date to January 31, 2011 for gift certificates, store gift cards, and general-use prepaid cards that were produced prior to April 1, 2010, provided certain conditions (including regarding in-store signage) were met. *See also* 75 FR 66644 (Oct. 29, 2010); Press Release, Network Branded Prepaid Card Ass'n, *Senate Passed, By Unanimous Consent, NBPCA Backed H.R. 5502, the ECO Card Act* (July 14, 2010), available at *http://www.nbpca.com/en/News-Room/Press-Releases/ECO-Card-Act.aspx* (stating that passage of the ECO Card Act granted industry ''a meaningful period to transition until January 31, 2011 thereby avoiding the needless destruction of hundreds of millions of cards and packaging that would have resulted in millions of dollars in losses . . . .'')

[521] *See* 79 FR 58602 (Sept. 29, 2014). The DOD subsequently finalized this rulemaking, which became effective on October 1, 2015 (compliance required by October 3, 2016). *See* 80 FR 43560 (July 22, 2015) and part II.C above.

following the publication of the rule in the **Federal Register** to approximately 12 months following issuance of the final rule. The Bureau has also made a number of modifications and accommodations in the rule to address particular concerns raised by commenters.

Specifically, the Bureau's final rule on prepaid accounts, as set forth herein, will generally become effective on October 1, 2017, with a few exceptions as discussed below. Under this final rule (unlike the proposal), financial institutions are not required to pull and replace prepaid account access devices and packaging materials with non-compliant disclosures that were produced in the normal course of business prior to October 1, 2017. The final rule also includes specific provisions addressing how financial institutions should provide notices of changes and updated initial disclosures in certain circumstances. Further, this final rule includes an accommodation for financial institutions that do not have readily available the data necessary to comply fully with the periodic statement alternative requirements in final § 1005.18(c)(1)(ii) and (iii) or the summary totals of fees requirement in final § 1005.18(c)(5) as of October 1, 2017. In addition, the requirement to submit prepaid account agreements to the Bureau pursuant to final § 1005.19(b) is delayed until October 1, 2018.

The Bureau has included several provisions in regulatory text and commentary to make clearer these specific modifications to the rule's general October 1, 2017 effective date. Specifically, final § 1005.18(h) establishes a general effective date as well as special transition rules for certain disclosure provisions. The delayed effective date for submission of prepaid account agreements to the Bureau is addressed in § 1005.19(f).

The Bureau notes that nothing in this final rule changes the existing requirements for payroll card accounts or government benefit accounts prior to October 1, 2017. Financial institutions offering payroll card accounts or government benefit accounts must comply with all existing requirements applicable to those accounts under EFTA and Regulation E until October 1, 2017. Beginning October 1, 2017, financial institutions must comply with modified requirements in subpart A of Regulation E for such accounts as set forth in this final rule.

Final § 1005.18(h)(1) provides that except as provided in § 1005.18(h)(2) and (3), the requirements of the final rule apply to prepaid accounts beginning October 1, 2017. Final § 1005.18(h)(2)(i) establishes an exception for non-compliant disclosures on existing prepaid account access devices and packaging materials to eliminate the proposed pull and replace requirement. In return, final § 1005.18(h)(2)(ii) requires that financial institutions provide notices of certain changes and updated initial disclosures to consumers who acquire prepaid accounts on or after October 1, 2017 via non-compliant packaging materials printed prior to the effective date. Final § 1005.18(h)(2)(iii) clarifies the requirements for providing notice of changes to consumers who acquired prepaid accounts before October 1, 2017. Final § 1005.18(h)(2)(iv) facilitates the delivery of the notices of changes and updated initial disclosures for prepaid accounts governed by § 1005.18(h)(2)(ii) or (iii). Finally, § 1005.18(h)(3) sets forth the accommodation for financial institutions that do not have readily accessible the data necessary to comply fully with the periodic statement alternative or summary totals of fees requirements. These provisions are each discussed in detail below.

18(h)(1). Final § 1005.18(h)(1) explains, that except as provided in § 1005.18(h)(2) and (3), the requirements of subpart A of Regulation E, as modified by final § 1005.18, apply to prepaid accounts as defined in final § 1005.2(b)(3), including government benefit accounts subject to final § 1005.15, beginning October 1, 2017, which is approximately 12 months following the Bureau's issuance of this final rule.

The Bureau believes 12 months is an appropriate compliance period for this final rule in general, particularly given the modifications and accommodations discussed below, and should provide financial institutions sufficient time to review the requirements of the final rule, implement the necessary system and operational changes, and for coordination and planning among all industry participants. The Bureau has specified an October 1, 2017 effective date for the final rule in general, rather than making it contingent on publication of the final rule in the **Federal Register**, for several reasons. The Bureau believes an October 1, 2017 effective date will not interfere with holiday season system freezes and peak time demands, which commenters stated generally spans October through April, and setting a date certain in this context will provide more clarity and comfort to industry in this regard. (In response to related concerns raised by commenters, the Bureau believes that, given the modification to eliminate the proposed pull and replace requirement, and given that the liability shift for EMV cards took place in late 2015, the impact regarding the roll-out of EMV-enabled cards will be minimal, if at all.) In addition, the Bureau has included in regulatory text and commentary several detailed provisions and examples involving dates that it believes will be easier for industry to understand if a particular effective date is specified.[522] Finally, with respect to the Regulation Z portion of this final rule, TILA section 105(d) generally provides that a regulation requiring any disclosure that differs from the disclosures previously required by parts A, D, or E of TILA ''shall have an effective date of that October 1 which follows at least six months the date of promulgation.'' [523]

The Bureau seeks to ensure that consumers receive the benefit of the protections in this final rule as soon as possible and therefore declines to provide financial institutions additional time beyond the 12-month compliance period, except as discussed herein, to comply with specific portions of the rule, as suggested by commenters. With respect to an industry commenter's request to continue overdraft services for six months after the effective date without being subject to the final rule in order to inform consumers of changes to those services, the Bureau believes the overall change to a 12-month effective date should provide sufficient time to provide such notice to consumers. The Bureau does not believe any further modifications or extensions to the effective date are necessary or appropriate. Regarding commenters' concern about the time needed to handle inadvertent overdrafts such as those resulting from force pay transactions, the Bureau has generally excluded such transactions from coverage under Regulation Z.[524]

Regarding commenters' request to grandfather in or provide a timeframe to amend or rebid existing vendor contracts, the Bureau does not believe this is necessary and thus declines to do so; however, the Bureau believes the

[522] *See, e.g.,* final §§ 1005.18(b)(2)(ix) and 1005.19. See also the specific accommodations surrounding the effective date in final § 1005.18(h)(2) and (3) discussed herein.

[523] 15 U.S.C. 1604(d). This section also provides, however, that the Bureau may at its discretion lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements or shorten the length of time for creditors or lessors to make such adjustments when it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. *Id.*

[524] See final Regulation Z § 1026.61(a)(4).

modification to eliminate the proposed pull and replace requirement for preprinted packaging materials will help ameliorate commenters' concerns until new contracts can be executed.

The Bureau believes a 12-month compliance period is sufficient for financial institutions to make system and operational changes to comply with this final rule, especially given the modifications and accommodations discussed herein. Regarding commenters' concern about the time needed to design new disclosures, the Bureau is providing native design files (for print disclosures) and source code (for web-based disclosures) for all of the model and sample disclosures forms included in the final rule to aid in their development.[525] The Bureau is also committed to working with industry to help address and alleviate burden through regulatory implementation support and guidance.[526] With respect to commenters' concern about the time needed to change the process for providing disclosures prior to the acquisition of government benefit accounts, payroll card accounts, and campus cards, the final rule specifically clarifies the timing of acquisition requirements in final comment 18(b)(1)(i)–1 for payroll card accounts and prepaid accounts generally, and in final comments 15(c)–1 and –2 for government benefit accounts. These revisions are consistent with the current practices of many employers and government agencies and therefore should not necessitate significant modifications to current procedures. See the section-by-section analyses of §§ 1005.18(b)(1)(i) and 1005.15(c) for additional information regarding the timing for delivery of pre-acquisition disclosures.

Regarding commenters' concern about the time needed to implement changes to comply with the periodic statement alternative in § 1005.18(c)(1) and the summary totals of fees requirement in § 1005.18(c)(5), the Bureau believes the modifications made to those provisions should aid industry in coming into compliance with those requirements. Specifically, the Bureau has modified § 1005.18(c)(1)(ii) to require at least 12 months of electronic account transaction history, which commenters stated many financial institutions already make available, and therefore any changes needed to comply with that portion of the rule should be minimal. Likewise, providing at least 24 months of written account transaction history pursuant to final § 1005.18(c)(1)(iii) should have minimal impact on existing business processes because many financial institutions currently archive several years of account information.[527] Moreover, the Bureau has modified § 1005.18(c)(4), renumbered as § 1005.18(c)(5), to require financial institutions to provide the summary totals of fees only and has removed the proposed requirement to provide summary totals of all deposits to and debits from a consumer's prepaid account. The Bureau also believes the accommodation set forth in § 1005.18(h)(3) for financial institutions that do not have readily available the data necessary to comply fully with the periodic statement alternative or summary totals of fees requirements as of the effective date should provide financial institutions the time needed to comply with the final rule. See the section-by-section analysis of § 1005.18(c) for additional information regarding the periodic statement alternative and the summary totals of fees requirement.

The Bureau has also made several revisions to address commenters' concerns regarding the time needed to comply with the requirements to submit prepaid account agreements to the Bureau pursuant to final § 1005.19(b) and to post agreements on the issuer's Web site pursuant to final § 1005.19(c). With respect to the submission requirement, the final rule sets forth a delayed effective date in final § 1005.19(f)(2), which will provide issuers the time needed to develop and implement their own internal processes and procedures for submitting agreements to the Bureau. Regarding the posting requirement, the Bureau believes the modification in final § 1005.19(c) to require issuers to post on their Web sites only agreements that are offered to the general public will reduce the number of agreements at least some issuers must post and therefore should decrease the amount of time needed to comply with this requirement relative to the proposal. In addition, the Bureau believes many issuers already post these agreements to their Web sites. See the section-by-section analysis of § 1005.19 for additional information about the prepaid account agreement submission and posting requirements and the related effective dates.

18(h)(2)(i). Final § 1005.18(h)(2)(i) establishes an exception for non-compliant disclosures on existing prepaid account access devices and packaging materials. Specifically, it provides that the disclosure requirements of subpart A of Regulation E, as modified by final § 1005.18, shall not apply to any disclosures that are provided, or that would otherwise be required to be provided, on prepaid account access devices, or on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017.

The Bureau is not adopting the proposed requirement that financial institutions and their third-party distribution agents remove from retail store shelves and other distribution channels any prepaid accounts with disclosures not fully in compliance with the final rule as of the effective date. Thus, financial institutions are not required to pull and replace prepaid account access devices and packaging materials that do not contain new disclosures required by this final rule (such as the short form disclosure) or that contain disclosures that are no longer accurate as a result of this final rule (such as a disclosure stating that at least 60 days of electronic and written account transaction history are available under the periodic statement alternative, rather than 12 and 24 months of history, respectively, as required by this final rule). Likewise, financial institutions are not required to retrieve from consumers prepaid account access devices, such as prepaid cards, that were distributed prior to the effective date. The Bureau believes this modification will help to reduce the demand on packaging manufacturers, which commenters stated would have strained resources and caused delays in the production process, and will also mitigate the waste that would have been associated with pulling and replacing packaging with non-compliant disclosures. Financial institutions are not required to provide the pre-acquisition disclosures pursuant to final § 1005.18(b) prior to October 1, 2017.

The Bureau is adopting new comment 18(h)–1 to explain that the October 1, 2017 effective date applies to disclosures made available or provided to consumers electronically, orally by telephone, or in a form other than on pre-printed materials, such as disclosures printed on paper by a financial institution upon a consumer's request. In addition, the Bureau is adopting new comment 18(h)–2 to provide examples of disclosures that would fall under the exception set forth in § 1005.18(h)(2)(i) and to make clear that disclosures and access devices that

[525] These files are available at *www.consumerfinance.gov/prepaid-disclosure-files.*

[526] *See, e.g., http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid.*

[527] See the section-by-section analyses of § 1005.18(c)(1)(ii) and (iii) above.

are manufactured, printed, or otherwise produced on or after October 1, 2017 must comply with all the requirements of subpart A of Regulation E.

18(h)(2)(ii). Because the final rule does not require financial institutions to pull and replace packaging materials manufactured, printed, or otherwise produced before October 1, 2017, the Bureau believes it is appropriate to require financial institutions to provide a notice of certain changes and updated initial disclosures to consumers who acquire prepaid accounts on or after October 1, 2017 via such non-compliant packaging materials. Specifically, new § 1005.18(h)(2)(ii)(A) requires that, if a financial institution has changed a prepaid account's terms and conditions as a result of this final rule taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, the financial institution must provide to the consumer a notice of the change within 30 days of obtaining the consumer's contact information. Separately, § 1005.18(h)(2)(ii)(B) requires that the financial institution mail or deliver to the consumer initial disclosures pursuant to § 1005.7 and § 1005.18(f)(1) that have been updated as a result of this final rule taking effect, within 30 days of obtaining the consumer's contact information. The Bureau notes that financial institutions must mail or deliver initial disclosures pursuant to § 1005.18(h)(2)(ii)(B) even if § 1005.18(h)(2)(ii)(A) does not apply.

Because of changes made in the final rule relative to the proposal, the Bureau believes that it is even less likely that financial institutions will make broad changes to their prepaid programs as a result of the final rule taking effect of the kind that would trigger requirements to provide a change-in-terms notice to existing customers under § 1005.8(a) or § 1005.18(f)(2). Those rules require that existing customers be provided with an advance notice in writing only for changes that would result for the consumer in increased fees, increased liability, fewer types of available EFTs, or stricter limitations on the frequency or dollar amount of transfers. For instance, because the final rule requires that Regulation E limited liability and error resolution requirements apply to all accounts, even if they are not registered or verified, the Bureau no longer anticipates that financial institutions would be making changes to their account agreements that would increase liability for consumers. However, based on comments the Bureau received from industry, the Bureau is aware that some financial institutions anticipate discontinuing an available EFT service as it is currently offered as a result of the final rule taking effect, in that the new requirements imposed on overdraft credit features offered in conjunction with prepaid accounts would require certain program restructuring in ways that may affect availability in certain circumstances or for certain consumers.

In light of these circumstances, the Bureau believes it is appropriate to impose a requirement (in § 1005.18(h)(2)(ii)(A)) on financial institutions that is parallel to the spirit of Regulation E change-in-terms requirements to notify consumers who acquire a prepaid account after the effective date of the final rule via non-compliant packaging if such changes to the prepaid account's terms and conditions are being made as a result of the rule taking effect. Accordingly, § 1005.18(h)(2)(ii) requires such notice to be provided, via the method specified in § 1005.18(h)(2)(iv), within 30 days of obtaining the consumer's contact information.

While the Bureau believes that changes to existing programs' terms and conditions as a result of this final rule taking effect that would trigger change-in-terms requirements under Regulation E for existing customers will be rare, the Bureau expects that financial institutions will make other types of changes to their initial disclosures pursuant to §§ 1005.7 and 1005.18(f)(1) in response to this final rule. Accordingly, in light of the decision not to require that outdated packaging be pulled and replaced, the Bureau believes it is appropriate to require (in § 1005.18(h)(2)(ii)(B)) that consumers who acquire a prepaid account with packaging that was printed prior to the effective date receive updated initial disclosures that accurately describe the account's terms, conditions, and related information as required under the final rule.

The Bureau is adopting § 1005.18(h)(2)(ii) pursuant to its authority under EFTA sections 904(a) and (c) and 905(a), and section 1032 of the Dodd-Frank Act. The Bureau believes that the notices required pursuant to new § 1005.18(h)(2)(ii) will, consistent with section 1032(a) of the Dodd-Frank Act, 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. In addition, consistent with EFTA sections 904 and 905(a), the Bureau believes the updated initial disclosures will help consumers understand the new terms of their prepaid accounts, as authorized under EFTA section 904(a) and (c) to effectuate the purposes of EFTA.[528]

Because financial institutions generally mail to consumers a personalized prepaid card embossed with the consumer's name, and other informational materials, after the account is registered, the Bureau believes that requiring financial institutions to include a notice of the applicable changes to the prepaid account's terms and conditions and the updated initial disclosures in that mailing will impose very little burden on industry. Further, as discussed under new § 1005.18(h)(2)(iv) below, a financial institution is permitted to deliver the notice and disclosures electronically, without regard to E-Sign consent, if it is not otherwise already mailing or delivering to the consumer written account-related communications within the time periods specified in new § 1005.18(h)(2)(ii). The Bureau believes that the combined effect of new § 1005.18(h)(2)(i) and (ii) will help reduce compliance burden on industry relative to the proposal, while still providing appropriate transparency to consumers.

18(h)(2)(iii). The Bureau is adopting new § 1005.18(h)(2)(iii) to specify and balance burden concerns with respect to providing notices of changes to prepaid accounts' terms and conditions to consumers who acquired prepaid accounts before October 1, 2017. As with § 1005.18(h)(2)(ii) discussed above, the Bureau recognizes that some financial institutions may make changes to prepaid account terms and conditions as a result of this final rule taking effect that would otherwise require a change-in-terms notice under Regulation E, in that the new requirements imposed on overdraft credit features offered in conjunction with prepaid accounts would require certain program restructuring in ways that may affect availability in certain circumstances or to certain consumers. The Bureau believes that financial institutions that offer such features typically require consumers to consent to delivery of electronic disclosures pursuant to the E-Sign Act before any credit is extended, but there may be other consumers with prepaid accounts in the same prepaid account program who have never sought

[528] The Bureau notes that this approach is similar to EFTA section 905(c), which provided that for any account of a consumer made accessible prior to EFTA's effective date, the initial disclosures required by EFTA section 905(a) were required to have been disclosed not later than the earlier of (1) the first periodic statement required by EFTA section 906(c) after EFTA's effective date or (2) 30 days after EFTA's effective date.

to activate that feature on their prepaid accounts and who have not specifically consented to electronic delivery.

In light of these unusual circumstances and other considerations with regard to general implementation of the final rule, the Bureau believes that financial institutions may choose to effectuate such changes in terms as of October 1, 2017, or may want to do so earlier depending on operational convenience. New § 1005.18(h)(2)(iii), which applies to prepaid accounts acquired by consumers before October 1, 2017, is designed to address both scenarios. Specifically, it provides that if a financial institution has changed a prepaid accounts' terms and conditions as a result of this final rule taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, the financial institution must provide to the consumer a notice of the change at least 21 days in advance of the change becoming effective, provided the financial institution has the consumer's contact information. If the financial institution obtains the consumer's contact information less than 30 days in advance of the change becoming effective or after it has become effective, the financial institution is permitted instead to notify the consumer of the change in accordance with the timing requirements set forth in § 1005.18(h)(2)(ii)(A). The financial institution is not required to send a change-in-terms notice for such change pursuant to § 1005.8(a) or § 1005.18(f)(2). As discussed under new § 1005.18(h)(2)(iv) below, a financial institution may provide the notice pursuant to § 1005.18(h)(2)(iii) in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act in certain circumstances.

The Bureau believes this special notice requirement provides appropriate flexibility to financial institutions in informing consumers with regard to changes to their accounts as a result of the final rule taking effect. The Bureau emphasizes, however, that all changes to a prepaid account's terms and conditions as a result of this final rule taking effect must nevertheless become effective by October 1, 2017. That is, if a financial institution were to provide to a consumer a notice of a change that is subject to § 1005.18(h)(2)(iii) on September 20, the change must nonetheless become effective by October 1; a financial institution is not permitted to delay the effective date of such a change until October 11 (*i.e.,* 21 days after the financial institution notified the consumer).

The Bureau is adopting § 1005.18(h)(2)(iii) pursuant to its authority under EFTA sections 904(a) and (c), and section 1032 of the Dodd-Frank Act. EFTA section 905(b) requires financial institutions to notify consumers in writing at least 21 days prior to the effective date of any change in any term or condition of the consumer's account if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. Because of the unique circumstances involved in effectuating the final rule particularly with regard to consumers who have never sought to activate a credit or overdraft feature in conjunction with a prepaid account and consumers who may be acquiring prepaid accounts close to the date that certain services are discontinued or restricted, the Bureau is exempting financial institutions in this limited circumstance from complying with the change-in-terms notice requirements in § 1005.8(a) and § 1005.18(f)(2). Instead, financial institutions must notify consumers of the change, using the method specified in § 1005.18(h)(2)(iv), 21 days in advance of the change taking effect or, in some circumstances, within 30 days of obtaining the consumer's contact information. Pursuant to EFTA section 904(c), the Bureau believes that exemption from the change-in-terms notice requirement 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 and to facilitate compliance, by assisting consumers' understanding of the new terms and conditions of their prepaid accounts that are purchased in outdated packaging. In addition, the Bureau believes that the notice to consumers regarding changes to terms and conditions pursuant to § 1005.18(h)(2)(iii) will, consistent with section 1032(a) of the Dodd-Frank Act, 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.

Although the Bureau did not propose, nor is it finalizing, a requirement that financial institutions to provide updated initial disclosures to all consumers who opened prepaid accounts prior to the effective date of this final rule, the Bureau notes that it believes it would nonetheless be beneficial for financial institutions to provide updated initial disclosures to existing customers so that they will understand their rights under the new regime and to avoid potential consumer confusion. Accordingly, as discussed in connection with § 1005.18(h)(2)(iv) below, the Bureau has provided a special rule to facilitate delivery of such communications.

18(h)(2)(iv). The Bureau is adopting new § 1005.18(h)(2)(iv) to facilitate delivery of notices of certain changes and updated initial disclosures for prepaid accounts governed by § 1005.18(h)(2)(ii) or (iii). Specifically, it provides that for these accounts, if a financial institution has not obtained a consumer's consent to provide disclosures in electronic form pursuant to the E-Sign Act, or is not otherwise already mailing or delivering to the consumer written account-related communications within the respective time periods specified in § 1005.18(h)(2)(ii) or (iii), the financial institution may provide to the consumer a notice of a change in terms and conditions pursuant to § 1005.18(h)(2)(ii) or (iii) or required or voluntary updated initial disclosures as a result of this final rule taking effect in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

As discussed above, the Bureau has decided, in response to comments, that financial institutions should not be required to pull and replace prepaid account packaging materials with non-compliant disclosures that were produced in the normal course of business prior to October 1, 2017. In addition, the Bureau believes specific provisions are necessary to address how financial institutions should provide notices of certain changes to prepaid account terms and conditions and updated initial disclosures for prepaid accounts that are acquired via outdated packaging. As discussed above, the Bureau believes that most financial institutions will be able to send the notices and disclosures pursuant to § 1005.18(h)(2)(ii) and (iii) at the same time it sends an embossed card following account registration, and therefore there should be little additional burden. For existing customers from whom the financial institution has not already obtained consent to receive disclosures electronically pursuant to the E-Sign Act, or for customers to whom the financial institution is not otherwise mailing or delivering written account-related communications during the relevant time period, the Bureau believes that permitting electronic delivery of notices of changes in terms and conditions pursuant to § 1005.18(h)(2)(ii) or (iii) or required or

voluntary updated initial disclosures as a result of this final rule taking effect will minimize compliance burden while still facilitating consumers' understanding of the new terms and conditions of their prepaid accounts in a timely way. Accordingly, new § 1005.18(h)(2)(iv) addresses delivery of voluntary disclosures as well as disclosures that are specifically required under final rule § 1005.18(h)(2)(ii) and (iii) in order to incentivize and facilitate such communications.

The Bureau is adopting new comments 18(h)–3, –4, and –5 to provide further guidance regarding the provision of consumers with notices pursuant to final § 1005.18(h)(2). Specifically, new comment 18(h)–3 explains that a financial institution that is required to notify consumers of a change in terms and conditions pursuant to § 1005.18(h)(2)(ii) or (iii), or that otherwise provides updated initial disclosures as a result of this final rule taking effect, may provide the notice or disclosures either as a separate document or included in another notice or mailing that the consumer receives regarding the prepaid account to the extent permitted by other laws and regulations. New comment 18(h)–4 explains that a financial institution that has not obtained the consumer's contact information is not required to comply with the requirements set forth in § 1005.18(h)(2)(ii) or (iii). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

The Bureau is adopting new comment 18(h)–5 to explain the requirements for closed and inactive accounts. Specifically, new comment 18(h)–5 explains that the requirements of § 1005.18(h)(2)(iii) do not apply to prepaid accounts that are closed or inactive, as defined by the financial institution. However, if an inactive account becomes active, the financial institution must comply with the applicable portions of those provisions within 30 days of the account becoming active again in order to avail itself of the timing requirements and accommodations set forth in § 1005.18(h)(2)(iii) and (iv).

18(h)(3). As discussed above, the Bureau is adopting new § 1005.18(h)(3) and new comment 18(h)–6 to provide an accommodation for financial institutions that do not have sufficient data in a readily accessible form in order to fully comply with the requirements for providing electronic and written account transaction history pursuant to final § 1005.18(c)(1)(ii) and (iii) and the summary totals of fees pursuant to final § 1005.18(c)(5) by October 1, 2017. New § 1005.18(h)(3)(i) provides that if, on October 1, 2017, a financial institution does not have readily accessible the data necessary to make available 12 months of electronic account transaction history pursuant to final § 1005.18(c)(1)(ii) or to provide 24 months of written account transaction history upon request pursuant to final § 1005.18(c)(1)(iii), the financial institution may make available or provide such histories using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with the requirements set forth in § 1005.18(c)(1)(ii) and (iii).

New comment 18(h)–6.i provides the following example to illustrate the provisions of final § 1005.18(h)(3)(i): a financial institution that had been retaining only 60 days of account history before October 1, 2017 would provide 60 days of written account transaction history upon a consumer's request on October 1, 2017. If, on November 1, 2017, the consumer made another request for written account transaction history, the financial institution would be required to provide three months of account history. The financial institution must continue provide as much account history as it has accumulated at the time of a consumer's request until it has accumulated 24 months of account history. Thus, all financial institutions must fully comply with the electronic account transaction history requirement set forth in § 1005.18(c)(1)(ii) no later October 1, 2018 and must fully comply with the written account transaction history requirement set forth in § 1005.18(c)(1)(iii) no later October 1, 2019.

Similarly, new § 1005.18(h)(3)(ii) provides that if, on October 1, 2017, the financial institution does not have readily accessible the data necessary to calculate the summary totals of the amount of all fees assessed by the financial institution on the consumer's prepaid account for the prior calendar month and for the calendar year to date pursuant to § 1005.18(c)(5), the financial institution may display the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by § 1005.18(c)(5). New comment 18(h)–6.ii explains that if, on October 1, 2017, the financial institution does not have readily accessible the data necessary to calculate the summary totals of fees for the prior calendar month or the calendar year to date, the financial institution may provide the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by § 1005.18(c)(5). That is, the financial institution would first display the monthly fee total beginning on November 1, 2017 for the month of October, and the year-to-date fee total beginning on October 1, 2017, provided the financial institution discloses that it is displaying the year-to-date total beginning on October 1, 2017 rather than for the entire calendar year 2017. On January 1, 2018, financial institutions must begin displaying year-to-date fee totals for calendar year 2018.

19(f). The effective dates for the prepaid account agreement submission and posting requirements in final § 1005.19 are discussed in more detail in the section-by-section analysis of § 1005.19(f) below. Final § 1005.19(f)(1) provides that the requirements of final § 1005.19 apply to prepaid accounts beginning on October 1, 2017, except as provided in final § 1005.19(f)(2), which sets forth a delayed effective date of October 1, 2018 for the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to final § 1005.19(b).

Section 1005.19 Internet Posting of Prepaid Account Agreements

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.[529] The Board implemented these provisions in what is now Regulation Z § 1026.58.[530] The Bureau's receipt of credit card agreements pursuant to Regulation Z § 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 proposed and is finalizing § 1005.19 for substantially the same reasons with respect to prepaid accounts. Specifically, the Bureau proposed § 1005.19 to require prepaid account issuers to submit agreements for prepaid accounts to the Bureau for posting on a publicly-available Web site established and maintained by the

[529] 15 U.S.C. 1632(d).

[530] In 2015, the Bureau suspended temporarily the requirement that credit card issuers submit agreements to the Bureau. *See* Regulation Z § 1026.58(g); 80 FR 21153 (Apr. 17, 2015). The temporary suspension expired one year later. *See* 81 FR 19467 (Apr. 5, 2016).

Bureau. The Bureau also proposed 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. The Bureau expects to use the prepaid account agreements it receives from issuers pursuant to § 1005.19 to assist in its market monitoring efforts pursuant to its authority under Dodd-Frank Act section 1022(c)(1) and (4). In addition, the Bureau believes that posting prepaid account agreements on the Bureau's Web site in the future will 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 will 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 mirrored existing provisions in Regulation Z § 1026.58. The final rule mirrors Regulation Z § 1026.58 in many respects as well, although the final rule deviates from the proposal and Regulation Z § 1026.58 in some instances, as discussed below. 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. However, the requirements of Regulation Z § 1026.58 and those of § 1005.19 are distinct and independent of one another. In other words, issuers must comply with both as appropriate. The Bureau notes, however, that it does not believe it is likely that any agreement will constitute both a credit card agreement and a prepaid account agreement and thus be required to be submitted under both § 1005.19 and Regulation Z § 1026.58. Given the requirement in new Regulation Z § 1026.61(b) that credit features accessible by hybrid prepaid-credit cards generally must be structured as separate sub-accounts or accounts distinct from the prepaid asset account, in conjunction with the account-opening disclosure requirements in existing Regulation Z § 1026.6 and the initial disclosure requirements in existing § 1005.7(b) as well as final § 1005.18(f)(1), the Bureau believes it is unlikely that an issuer would use a single agreement to provide all such disclosures for both a prepaid account and for a covered separate credit feature.

The Bureau proposed and is finalizing § 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 final 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 will, consistent with section 1032(a) of the Dodd-Frank Act, 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 also proposed and is finalizing § 1005.19 pursuant to its authority in section 1022(c)(4) of the Dodd-Frank Act. Section 1022(c)(1) of the Dodd-Frank Act directs the Bureau to 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. In support of this function, the Bureau has authority under section 1022(c)(4) to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers. Thus, pursuant to the Bureau's authority under section 1022(c), the Bureau is finalizing a requirement that prepaid account issuers submit prepaid account agreements to the Bureau on a rolling basis, subject to certain exceptions, 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 the future, the Bureau intends to publish on its Web site a database of the prepaid account agreements collected, similar to the database currently available for credit card agreements. Under section 1022(c)(3) of the Dodd-Frank Act, the Bureau ''shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year,'' and ''may make public such information obtained by the Bureau under this section as is in the public interest.'' The Bureau is not finalizing proposed § 1005.19(b)(7) regarding posting of agreements on the Bureau's Web site, however, given that the requirement speaks to the Bureau's actions and not to regulated entities, and thus there is no need to finalize the provision through regulatory text.

For the reasons discussed below, the Bureau is generally finalizing § 1005.19 as proposed with certain modifications as summarized here and discussed in detail below. Specifically, the Bureau is finalizing § 1005.19(a) largely as proposed, but is adopting new § 1005.19(a)(6) to define the term ''offers to the general public'' to accommodate a revision in final § 1005.19(c) to require only agreements that are offered to the general public to be posted to the issuer's publicly available Web site. The Bureau is also finalizing § 1005.19(b) with several modifications to revise the time period in which issuers must submit agreements to the Bureau from a quarterly basis to a rolling basis. Furthermore, the Bureau is adopting new § 1005.19(b)(1)(v) to add to the list of criteria set forth in § 1005.19(b)(1)(i) through (iv) that issuers must also include in their submission any other identifying information about each agreement, as required by the Bureau, which may include the effective date, the name of the program manager, and the name of other relevant parties, if applicable, such as the employer for a payroll card program. In addition, as discussed above, the Bureau has removed proposed § 1005.19(b)(7) regarding posting of agreements on the Bureau's Web site, though the Bureau still intends to publish the agreements it receives in the future. The Bureau is finalizing the general requirement in § 1005.19(c) that issuers post and maintain prepaid account agreements on their publicly available Web sites, except if those agreements are not available to the general public or if they qualify for one of the proposed exceptions. The Bureau is also finalizing the general requirement in § 1005.19(d) to provide consumers with access to their individual prepaid account agreements. Furthermore, the Bureau is finalizing § 1005.19(e) as proposed to waive the requirement that issuers obtain E-Sign consent from consumers in order to provide prepaid account agreements in electronic form pursuant

to § 1005.19(c) and (d). Finally, the Bureau is adopting new § 1005.19(f) to state that the requirements of final § 1005.19 apply to prepaid accounts beginning on October 1, 2017, except for the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to final § 1005.19(b), which has a delayed effective date of October 1, 2018.

19(a) Definitions

The Bureau proposed in § 1005.19(a) certain definitions specific to proposed § 1005.19. The Bureau is largely finalizing § 1005.19(a) as proposed, with several modifications as discussed below.

19(a)(1) Agreement

The Bureau proposed § 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 would have also included fee information, as defined in proposed § 1005.19(a)(3), discussed below. Proposed § 1005.19(a)(1) would have mirrored the definition of ''agreement'' or ''credit card agreement'' in Regulation Z § 1026.58(b)(1).

Proposed comment 19(a)(1)–1 would have explained that an agreement may consist of several documents that, taken together, define the legal obligation between the issuer and the consumer. The Bureau did not include 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 did not believe that prepaid account agreements contain arbitration clauses or provisions allowing the issuer to unilaterally alter contract terms in documents that are 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 did not include 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 did not believe such a comment was relevant to prepaid accounts.

The Bureau received no comments regarding this portion of the proposal. Accordingly, the Bureau is finalizing § 1005.19(a)(1) and comment 19(a)(1)–1 as proposed.

19(a)(2) Amends

The Bureau proposed § 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 would have been considered 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) would have been deemed to be substantive. Proposed § 1005.19(a)(2) mirrors the definition of the term amends in Regulation Z § 1026.58(b)(2).

With respect to Regulation Z § 1026.58, the Board had 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.[531] The Bureau believed the same would be true for prepaid account issuers and therefore proposed a similar definition here.

Proposed comment 19(a)(2)–1 would have given 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 would have given 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 received comments from two consumer groups regarding whether certain changes, such as to an issuer's corporate name or to the name of the prepaid account program to which the agreement applies, should be considered substantive for the purposes of § 1005.19. These commenters argued that such changes should be deemed substantive, explaining that they could impact a consumer's or researcher's ability to find an agreement if it was searched for using a different name.

For the reasons set forth herein, the Bureau is finalizing § 1005.19(a)(2) as proposed. The Bureau is also finalizing comment 19(a)(2)–1 with several revisions. The Bureau has modified comment 19(a)(2)–1 to include the following as examples of changes that would generally be considered substantive: changes to the corporate name of the issuer or program manager, or to the issuer's address or identifying number, such as its RSSD ID number or tax identification number; and changes to the names of other relevant parties, such as the employer for a payroll card program or the agency for a government benefit program; and changes to the name of the prepaid account program to which the agreement applies. In addition, the Bureau is finalizing comment 19(a)(2)–2 with corresponding revisions to remove changes to the name of the prepaid account program to which the agreement applies as an example of a change that generally would not be considered substantive. The Bureau agrees with commenters that if changes to the corporate name of the issuer or program manager and changes to the name of the prepaid account program to which the agreement applies are not reflected in agreements posted to the issuer's Web site or to the Bureau's Web site in the future, a consumer might not be able to locate an agreement for an existing prepaid account or effectively compare agreements when shopping for a new prepaid account. Other parties, such as researchers, would likely also find it difficult to locate particular agreements.

19(a)(3) Fee Information

The Bureau proposed § 1005.19(a)(3) to define ''fee information'' for purposes

[531] 75 FR 7658, 7760 (Feb. 22, 2010).

of proposed § 1005.19 as the information listed in the long form fee disclosure in proposed § 1005.18(b)(2)(ii).

Proposed § 1005.19(a)(3) was similar to the definition of pricing information in Regulation Z § 1026.58(b)(7), but omitted the exclusion for temporary or promotional rates and terms or rates and terms that apply only to protected balances, as the Bureau did not believe there is currently an equivalent to such rates and terms for prepaid accounts.

The Bureau received comments from several consumer groups regarding whether issuers should be required to include the short form disclosure (required by proposed § 1005.18(b)(2)(i)) in the definition of fee information and thus be required to submit it to the Bureau and post it on the issuer's Web site. Two consumer groups requested that issuers be required to submit short form disclosures to the Bureau for posting on the Bureau's Web site. Another consumer group stated that the short form disclosure should be required to be placed on either the issuer's homepage or the landing page for the product.

The Bureau is finalizing § 1005.19(a)(3) with several modifications. The Bureau is retaining the general definition of fee information from the proposal, but is modifying it to also include the short form disclosure. The Bureau has also made changes to the internal paragraph citations to reflect other numbering changes made in this final rule. Specifically, final § 1005.19(a)(3) provides that the term fee information means the short form disclosure for the prepaid account pursuant to § 1005.18(b)(2) and the fee information and statements required to be disclosed in the pre-acquisition long form disclosure for the prepaid account pursuant to final § 1005.18(b)(4).

The Bureau continues to believe 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 to the issuer's Web site and on the Bureau's Web site in the future include fees and other pricing information. The Bureau expects that most issuers will include the long form disclosure itself as required by final § 1005.18(b)(4) (or the long form information pursuant to final § 1005.18(f)(1)) 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.

Upon further consideration, the Bureau believes it is necessary that issuers also submit the short form disclosure to the Bureau and post it to their Web sites, as suggested by some commenters. The Bureau believes submitting the short form disclosure, in addition to the information on the long form disclosure, will be useful to both the Bureau in its market monitoring efforts and to consumers and other parties in the future when prepaid account agreements are posted to the Bureau's Web site. The Bureau believes the short form disclosure, particularly the disclosures related to additional fee types pursuant to final § 1005.18(b)(2)(viii) and (ix), will provide the Bureau with insight into industry practices in implementing this final rule's disclosure requirements across a range of prepaid account types. In addition, the Bureau does not believe the requirement to submit this one additional document will be particularly burdensome or complicated for issuers, especially because the Bureau believes that issuers will generally maintain their short form disclosures in a readily accessible, electronic format.

19(a)(4) Issuer

The Bureau's Proposal

The Bureau proposed § 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) would have mirrored the definition of card issuer in Regulation Z § 1026.58(b)(4).

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 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 Regulation Z § 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.[532] Similarly, absent clarification from the Bureau, the Bureau was concerned that 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 in 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 believed it would be beneficial to clarify which institution would be the prepaid account issuer for purposes of proposed § 1005.19. The Bureau thus proposed to define the term issuer in proposed § 1005.19(a)(4) as described above.

Proposed comment 19(a)(4)–1, which mirrors Regulation Z comment 58(b)(4)–1, would have provided an example of how the definition of issuer would have applied when more than one bank is involved in a prepaid program.

Proposed comment 19(a)(4)–2, which mirrors Regulation Z comment 58(b)(4)–2, would have explained 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 the 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. Proposed comment 19(a)(4)–2 would have provided an example describing such an arrangement between a bank and a program manager.

Proposed comment 19(a)(4)–3, which mirrors Regulation Z comment 58(b)(4)–3.i, would have noted 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 would have been

[532] *See* 76 FR 22948, 22987 (Apr. 25, 2011).

deemed to maintain that Web site for purposes of proposed § 1005.19. Such a Web site would have been 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 would have been considered an example of a third-party Web site that may be deemed to be maintained by the issuer for purposes of proposed § 1005.19. Proposed comment 19(a)(4)–3 would have provided an example describing such an arrangement between a bank and a program manager.

The Bureau did not propose 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 did not believe such a comment was relevant for prepaid accounts, as discussed below.

Comments Received

In the proposal, the Bureau acknowledged 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 of 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 solicited 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. The Bureau received comments from one consumer group regarding this issue, stating that a single agreement could be submitted as long as the agreement is labeled and searchable in such a way that the names of the multiple entities are listed on it. This commenter explained that this approach would enable the public to see that the agreement is the same for several entities, without having to spend time reviewing each agreement. The Bureau did not receive any other comments on this portion of the proposal.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.19(a)(4) and its related commentary substantially as proposed, with several revisions for clarity. The Bureau has also changed the name of final comment 19(a)(4)–3 from *Partner Institution Web sites* as proposed to *Third-Party Web sites* because the content of the comment is primarily related to third-party Web sites; a partner institution Web site is merely an example of a third-party Web site that may be deemed to be maintained by the issuer for purposes of final § 1005.19.

The Bureau continues to believe that the definition of issuer creates a bright-line rule that will enable institutions involved in issuing prepaid accounts to determine their obligations under final § 1005.19. The Bureau also believes that the definition is consistent with the actual legal relationship into which a consumer enters under a prepaid account agreement. In addition, the Bureau believes that the institution to which the consumer is legally obligated under the agreement may be in the best position to provide accurate, up-to-date agreements to both the Bureau and consumers.

Regarding situations in which an institution partners with multiple other entities to issue prepaid accounts, the Bureau is adopting new comment 19(b)(1)–2, to explain that if a program manager offers prepaid account agreements in conjunction with multiple issuers, each issuer must submit its own agreement to the Bureau. This comment also explains that each issuer may use the program manager to submit the agreement on its behalf, in accordance with final comment 19(a)(4)–2. Because the number and the role of the entities involved in a particular prepaid account agreement may vary, the Bureau believes it is clearer to require issuers, not program managers (or other parties), to submit these agreements to the Bureau. In addition, the Bureau believes that submitting a separate agreement for each issuer, rather than submitting one agreement with multiple issuers listed, as suggested by one commenter, will be less confusing to consumers and other parties reviewing agreements on the Bureau's Web site in the future.

19(a)(5) Offers

The Bureau proposed § 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 have explained 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, agreements for affinity cards marketed to students and alumni of a particular institution of higher education, or agreements offered only to residents of a specific geographic location for a particular prepaid account, would have been considered to be offered to the public. Similarly, agreements for prepaid accounts issued by a credit union would have been 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 would have also been considered to be offered to the public.

Proposed § 1005.19(a)(5) was similar to the definition of the term ''offers'' in Regulation Z § 1026.58(b)(5). Regulation Z § 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 did 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 modified this language for purposes of proposed § 1005.19(a)(5). Proposed comment 19(a)(5)–1 was similar to Regulation Z comment 58(b)(5)–1 but would have included several additional examples of prepaid accounts offered to the public. The Bureau did not propose an equivalent comment to Regulation Z 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 did not believe that prepaid account terms are modified in this manner.

The Bureau received no comments regarding this portion of the proposal. Accordingly, the Bureau is finalizing § 1005.19(a)(5) with modifications to accommodate the revision in final § 1005.19(c), discussed below, to require only agreements that are offered to the general public to be posted to the issuer's publicly available Web site. Specifically, the Bureau has removed the phrase ''offers to the public'' from § 1005.19(a)(5) and, as discussed below, is adopting new § 1005.19(a)(6) to define

the term ''offers to the general public.'' Final § 1005.19(a)(5) provides that an agreement is ''offered'' if the issuer markets, solicits applications for, or otherwise makes available a prepaid account that would be subject to that agreement, regardless of whether the issuer offers the prepaid account to the general public. Furthermore, because proposed comment 19(a)(5)–1 described agreements that are offered to the public, which is now discussed in new § 1005.19(a)(6), the Bureau has renumbered this comment as comment 19(a)(6)–1 and has made revisions for consistency with new § 1005.19(a)(6) discussed below.

19(a)(6) Offers to the General Public

As noted above, the Bureau is adopting new § 1005.19(a)(6) to define the term ''offers to the general public.'' Specifically, new § 1005.19(a)(6) provides that for purposes of final § 1005.19, an issuer ''offers to the general public'' a prepaid account agreement if the issuer markets, solicits applications for, or otherwise makes available to the general public a prepaid account that would be subject to that agreement.

The Bureau is finalizing proposed comment 19(a)(5)–1, renumbered as comment 19(a)(6)–1, with modifications for consistency with new § 1005.19(a)(6). Specifically, final comment 19(a)(6)–1 explains that an issuer is deemed to offer a prepaid account agreement to the general public even if the issuer markets, solicits applications for, or otherwise makes available prepaid accounts only to a limited group of persons. This comment explains that if, for example, an issuer solicits only residents of a specific geographic location for a particular prepaid account, the agreement would be considered to be offered to the general public. In addition, this comment explains that agreements for prepaid accounts issued by a credit union are considered to be offered to the general public even though such prepaid accounts are available only to credit union members.

The Bureau is also adopting new comment 19(a)(6)–2 to explain prepaid account agreements not offered to the general public. Specifically, this comment explains that a prepaid account agreement is not offered to the general public when a consumer is offered the agreement only by virtue of the consumer's relationship with a third party. This comment provides that 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 examples of agreements that are not offered to the general public.

19(a)(7) Open Account

The Bureau proposed § 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) would have been considered an open account or open prepaid account.

Proposed comment 19(a)(6)–1 would have explained that a prepaid account that meets any of the criteria set forth in proposed § 1005.19(a)(6) is considered open even if the issuer considers the account inactive. The term open account was 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) was similar to the definition of open account or open credit card account in Regulation Z § 1026.58(b)(6). While Regulation Z § 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 modified the definition to better reflect what it believed constitutes an open account in the prepaid context. Proposed § 1005.19(a)(6) would have included the explanation used in Regulation Z § 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 was similar to Regulation Z comment 58(b)(6)–1, with modifications to reflect the terms of proposed § 1005.19(a)(6).

The Bureau received no comments regarding this portion of the proposal. Accordingly, the Bureau is finalizing § 1005.19(a)(6), renumbered as § 1005.19(a)(7), largely as proposed, with revisions to reflect the changes in final Regulation Z § 1026.61 regarding hybrid prepaid-credit cards. Specifically, final § 1005.19(a)(6) provides, in part, that for the purposes of § 1005.19, a prepaid account is an ''open account'' or ''open prepaid account'' if the consumer can access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z § 1026.61, in connection with the account. The Bureau is also finalizing comment 19(a)(6)–1, renumbered as comment 19(a)(7)–1, as proposed, with minor revisions for clarity.

19(a)(8) Prepaid Account

The Bureau proposed § 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 have explained 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 received comments from several industry commenters, including issuing banks, industry trade associations, program managers, a think tank, and a law firm writing on behalf of a coalition of prepaid issuers, in response to the Bureau's request for comment regarding whether there were 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 § 1005.19, or that should be excluded from certain requirements in § 1005.19. These commenters urged the Bureau to exclude prepaid account agreements that are not offered to the public (such as for payroll card, government benefit, and campus card accounts) from the requirement in proposed § 1005.19(b) to submit agreements to the Bureau for posting on the Bureau's publicly available Web site and the requirement in proposed § 1005.19(c) to post agreements on the issuer's publicly available Web site. These commenters explained that for these types of accounts, an issuer could have thousands of agreements that have been negotiated between the issuer and a third party (such as an employer, a government agency, or a university) and that are often tailored to fit the needs of individual programs. These commenters stated that such volume and variety would clutter the Bureau's and issuer's Web sites, overwhelm consumers, and cause confusion because consumers might not understand which agreement

applies to their account or why the terms differ. These commenters stated that even if consumers could navigate the volume of agreements, the third party—not the consumers—chooses these agreements, so comparison shopping would not be an option. In addition, these commenters stated that the public posting of these agreements raises confidentiality concerns regarding the disclosure of proprietary account features, which would compromise the issuer's ability to negotiate customized account agreements. The commenters also argued that a public posting requirement would undermine competition because it would inhibit the incentive for companies to develop novel products.

Several consumer groups and the office of a State Attorney General urged the Bureau not to exclude any prepaid account agreements from the requirement to submit agreements to the Bureau for posting on the Bureau's publicly available Web site and the requirement to post agreements on the issuer's publicly available Web site. These commenters argued that publicly posting these agreements would encourage competition and transparency, which they stated would help lower fees, and facilitate comparison shopping, which they stated would result in more informed consumer decisions. One consumer group argued that the public posting of agreements would assist the Bureau, researchers, and consumer advocates in compiling information to issue reports and shed light on inappropriate practices by market participants. This commenter explained that the payroll card market, in particular, is secretive and issuers and employers in this market do not generally provide fee schedules when asked. This commenter added that when it began issuing reports on unemployment compensation cards, fees started to come down. This commenter also argued that employers, government agencies, nonprofit organizations, and other entities considering a prepaid card program would be able to see and compare the various terms offered in the market. This commenter further argued that, while payroll card issuers may have confidentiality clauses in their contracts with employers, those clauses do not bind employees because once a card is issued to an employee, the agreement is no longer confidential. Finally, the office of a State Attorney General argued that even though consumers who enroll in payroll card programs are not typically able to comparison shop because the employer selects their program, they would still be able to compare their plan with other wage payment options, such as a checking account, direct deposit, and other prepaid accounts.

For the reasons set forth herein, the Bureau is finalizing § 1005.19(a)(7), renumbered as § 1005.19(a)(8), as proposed. The Bureau is also finalizing comment 19(a)(7)–1, renumbered as comment 19(a)(8)–1, with minor revisions for clarity and an updated internal paragraph citation to reflect numbering changes made in this final rule.

The Bureau believes that the submission of all prepaid account agreements, including payroll card, government benefit, campus card, and other account agreements that are not available to the general public, is essential for the Bureau's market monitoring efforts. Furthermore, the Bureau's posting of these agreements to its Web site in the future will increase transparency in the terms of these agreements and the types and amounts of the fees imposed in these programs. The increased transparency will allow the public, including consumers, to become better informed about these accounts, which will likely encourage competition and improve fees in the various markets. In addition, the public posting to the Bureau's Web site in the future will allow entities such as employers, government agencies, and universities considering making prepaid account programs available to their constituencies to review similar agreements with other institutions and compare the various terms before entering into their own agreements. The Bureau also agrees that consumers of accounts with agreements that are not available to the general public, such as payroll card accounts, will be able to make meaningful comparisons with other wage payment options, such as a checking account, direct deposit, and other prepaid accounts. For these reasons, the Bureau declines to exclude payroll card, government benefit, campus card, and other account agreements that are not available to the general public from the final rule's submission requirement, as requested by some commenters.

The Bureau is persuaded, however, that posting agreements that are not offered to the general public to the issuer's publicly available Web site may impose unnecessary administrative burden and have little consumer benefit. The Bureau has thus modified § 1005.19(c), discussed below, to exempt agreements that are not offered to the general public from the posting requirement. The final rule does not require issuers to post on the issuer's publicly available Web site agreements that are not offered to the general public, such as payroll card, government benefit, and campus card agreements. However, issuers of these agreements are still required to provide consumers with access to their specific agreements, as required by final § 1005.19(d). See the section-by-section analysis of § 1005.19(c) below for additional information regarding the posting requirement.

Private Label Credit Cards

The Board defined the term ''private label credit card account'' in what is now Regulation Z § 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 Regulation Z § 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.[533]

The Bureau did not believe that equivalent provisions were 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 were outside the scope of the term prepaid account, as defined in proposed §§ 1005.2(b)(3) and 1005.19(a)(7). The Bureau did not receive any comments on this issue.

19(b) Submission of Agreements to the Bureau

Proposed § 1005.19(b) would have required each issuer to electronically submit to the Bureau prepaid account agreements offered by the issuer on a quarterly basis for the Bureau to post on its Web site pursuant to proposed § 1005.19(b)(7).

The Bureau received many comments from consumer groups and industry on this portion of the proposal. Consumer groups generally supported the proposal, arguing that it would provide important consumer benefits and impose little burden on industry. On the other hand, industry commenters, including trade associations, issuing banks, credit unions, a payment

[533] *See, e.g.,* Regulation Z § 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.

network, and a law firm writing on behalf of a coalition of prepaid issuers, cited reasons for why they believed the proposal would be burdensome and unnecessary. Several of these commenters also argued that the submission requirement in proposed § 1005.19(b) should be suspended until the Bureau develops an automated, streamlined submission process and system. A few of these commenters stated that submitting agreements to the Bureau should be manageable, assuming the process is similar to the process for submitting credit card agreements to the Bureau pursuant to Regulation Z § 1026.58. Other commenters argued, however, that the submission process should not be compared to the submission process for credit card agreements because there are many more prepaid account agreements than credit card agreements.

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b) with several modifications. The final rule also establishes a delayed effective date of October 1, 2018 for final § 1005.19(b), as discussed in the section-by-section analysis of § 1005.19(f)(2) below. The Bureau is finalizing § 1005.19(b)(1) with revisions to change the time period in which issuers must submit prepaid account agreements to the Bureau from a quarterly basis to a rolling basis and to clarify the information that each submission must contain. The Bureau is finalizing § 1005.19(b)(2) and (3), regarding the submission requirements for amended and withdrawn agreements, substantially as proposed. The Bureau is also finalizing § 1005.19(b)(4) and (5), regarding the de minimis and product testing exceptions, with modifications to clarify that whether an issuer or agreement qualifies for either exception is determined as of the last day of the calendar quarter. Moreover, the Bureau is finalizing § 1005.19(b)(6), regarding the form and content requirements for submissions to the Bureau, generally as proposed. Finally, the Bureau is not adopting § 1005.19(b)(7) at this time, as discussed below. The Bureau notes that due to the change requiring submissions to be made on a rolling, rather than quarterly, basis, as well as other modifications the Bureau has made for this final rule, the Bureau believes that the Regulation Z § 1026.58 guidance referenced in a number of the proposed comments would no longer be particularly useful to prepaid account issuers and thus the Bureau has modified the comments accordingly to include examples specific to prepaid directly in the commentary text.

19(b)(1) Submissions on a Rolling Basis

The Bureau's Proposal

The Bureau proposed § 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, unless certain exceptions applied. Such quarterly submissions would have been 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 have referred to Regulation Z comment 58(c)(1)–1 for additional guidance as to the quarterly submission timing requirement.

Regulation Z § 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). Because that definition applies generally in subpart A and the Bureau believed it was appropriate for use in proposed § 1005.19, the Bureau believed it was unnecessary to define the term again within proposed § 1005.19.

Proposed § 1005.19(b)(1) would have required that each quarterly submission contain the following four items. First, a quarterly submission would have been required to 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 would have been required to 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 had not previously submitted to the Bureau.

Third, the quarterly submission would have been required to 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).

Finally, the quarterly submission would have been required to contain notification regarding any prepaid account agreement previously submitted to the Bureau that the issuer was withdrawing, as described in proposed § 1005.19(b)(3), (4)(iii), and (5)(iii).

Proposed comment 19(b)(1)–2.i would have explained that an issuer would not be 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; or (C) ceasing to offer an agreement previously submitted to the Bureau. Proposed comment 19(b)(1)–2.ii would have referred 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 have explained 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 have also referred 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 mirrored Regulation Z § 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 were similar to Regulation Z comments 58(c)(1)–1, –2, and –3 except that proposed comments 19(b)(1)–1, –2.ii and –3 were shortened to cross-reference the parallel comments in Regulation Z for specific examples regarding quarterly submission of agreements as the Bureau intended that these provisions would function the same for prepaid accounts as they do for credit card accounts.

Comments Received

The Bureau received comments from both consumer groups and industry regarding whether the submission of agreements on a quarterly basis would be appropriate. The consumer groups and most of the industry commenters urged the Bureau to require issuers to submit agreements whenever changes are made. A few other industry commenters requested an annual submission. The industry commenters stated that because prepaid account agreements do not change often, imposing a quarterly submission requirement would result in burden associated with constantly monitoring

agreements for updates and ensuring that updated agreements are submitted to the Bureau. The consumer groups argued that a quarterly submission would not ensure that the Bureau has the most recent agreements, which they believed could erode consumer confidence and the value posting the agreements to the Bureau's Web site.

Several consumer groups and a labor organization requested that submissions to the Bureau include the names of the issuing bank, program manager, and branding entity (such as an employer, government agency, or institute of higher education), and other names that might be associated with a prepaid account (such as the entity that provides customer support). One of these commenters explained that many issuers use marketing or other affinity-related names that make it difficult for a consumer to know which entity issued the prepaid account. Another commenter suggested that submissions also include employer information and the effective date of the agreement. Conversely, one credit union trade association objected to providing to the Bureau the issuer's identifying information, arguing that such information is provided on the agreement as well as the disclosures, and the tax identification number and program manager are irrelevant.

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For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(1) with modifications to revise the time period in which issuers must make prepaid account agreement submissions to the Bureau from a quarterly basis to a rolling basis. Specifically, final § 1005.19(b)(1)(i) provides that an issuer must make submissions of prepaid account agreements to the Bureau on a rolling basis, in the form and manner specified by the Bureau. Final § 1005.19(b)(1)(i) also provides that submissions must be made to the Bureau no later than 30 days after an issuer offers, amends, or ceases to offer a prepaid account agreement, as described in final § 1005.19(b)(1)(ii) through (iv).

The Bureau believes that requiring submission of a prepaid account agreement on a rolling basis will help alleviate potential compliance burden related to the submission requirement. Specifically, the Bureau believes it will be less burdensome for issuers to submit agreements as they are offered or amended (or notification when an agreement is being withdrawn) than it would be for issuers to wait to submit agreements on a fixed schedule, especially since prepaid account agreements do not change often. Furthermore, the Bureau expects that issuers will incorporate the agreement submission process into their own internal business processes and believes the revision to require submission on a rolling basis (rather than quarterly) will help align those processes. In addition, the Bureau believes that requiring submission no later than 30 days after an issuer offers, amends, or ceases to offer an agreement will help ensure that the most up-to-date agreements are available to the Bureau for its market monitoring purposes, as well as on the Bureau's Web site in the future.

As noted above, § 1005.19(b)(1)(i) through (iv) lists the items that each submission to the Bureau must contain. Based on the comments it received, the Bureau has revised § 1005.19(b)(1)(i) to require that each submission also contain the effective date of the prepaid agreement, the name of the program manager, and the names of other relevant parties, if applicable, such as the employer for a payroll card program or the agency for a government benefit program. The Bureau believes that providing this identifying information about each agreement will help the Bureau, consumers, and other parties locate agreements quickly and more effectively. For example, submitting the name of each employer that offers a payroll card account under a specific agreement will assist consumers in identifying the agreement to which their payroll card account is subject. The Bureau notes, however, that submissions should not contain personally identifiable information relating to any consumer, such as the consumer's name, address, telephone number, or account number.

The Bureau is finalizing comment 19(b)(1)–1, with modifications for clarity and consistency with the revisions to § 1005.19(b)(1). This comment does not refer to Regulation Z comment 58(c)(1)–1 for additional guidance because, given that final § 1005.19(b)(1) requires submission of prepaid account agreements on a rolling rather than quarterly basis, the Bureau does not believe that comment would provide useful guidance. The Bureau is therefore adopting new comment 19(b)(1)–1 to provide examples illustrating the 30-day time period in which issuers must submit agreements.

The Bureau is not finalizing proposed comments 19(b)(1)–2 and –3, which would have provided clarification for the quarterly submission requirement, because the Bureau has revised § 1005.19(b)(1) to require issuers to make submissions of prepaid account agreements to the Bureau on a rolling basis.

As noted in the section-by-section analysis of § 1005.19(a)(4) above, the Bureau is adopting new comment 19(b)(1)–2 to explain the submission requirement for an institution that partners with multiple other entities to issue prepaid accounts. This comment explains that if a program manager offers prepaid account agreements in conjunction with multiple issuers, each issuer must submit its own agreement to the Bureau. This comment further explains that each issuer may use the program manager to submit the agreement on its behalf, in accordance with comment 19(a)(4)–2. Because the number and role of the parties involved in a particular prepaid account agreement may vary, the Bureau believes it is clearer to require issuers, not program managers (or other parties), to submit these agreements to the Bureau. In addition, the Bureau believes that submitting separate agreements for each issuer, rather than submitting one agreement with multiple issuers as suggested by one commenter, will be less confusing to consumers and other parties reviewing agreements on the Bureau's Web site in the future.

19(b)(2) Amended Agreements

The Bureau's Proposal

The Bureau proposed § 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 have referred 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 have also required 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 have further explained 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 have referred to Regulation Z comment 58(c)(3)–2 for additional guidance regarding the submission of amended agreements. Proposed comment 19(b)(2)–3 would have reiterated 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 have referred 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 have explained 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 would have been required to 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 have also referred to Regulation Z comment 58(c)(3)–4 for additional guidance as to the submission of revised agreements.

Proposed § 1005.19(b)(2) mirrored the Regulation Z provisions regarding submission of amended agreements in Regulation Z § 1026.58(c)(3). Proposed comments 19(b)(2)–1 through –4 mirrored Regulation Z comments 58(c)(3)–1 through –4, although the proposed 19(b)(2) comments were shortened to cross-reference the parallel comments in Regulation Z for specific examples of submission of amended agreements as the Bureau intended that these provisions would function the same for prepaid accounts as they do for credit card accounts.

The Final Rule

The Bureau received no comments on this portion of the proposal. Accordingly, the Bureau is finalizing § 1005.19(b)(2) as proposed, with several modifications for clarity and consistency with the revisions to § 1005.19(b)(1) to change the time period in which issuers must submit agreements to the Bureau from quarterly to rolling. Specifically, final § 1005.19(b)(2) provides that if a prepaid account agreement previously submitted to the Bureau is amended, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change comes effective. Given the revisions to § 1005.19(b)(1), the Bureau has removed proposed comments 19(b)(2)–1 and –2, which would have explained the requirement to submit amended agreements on a quarterly basis.

The Bureau is not finalizing proposed comment 19(b)(2)–3, which would have provided guidance for issuers submitting amended agreements that are no longer offered, because under the revised rolling submission requirement, an issuer would not likely amend an agreement and less than 30 days later decide to stop offering that agreement. If the issuer stopped offering the agreement, the issuer would be required to notify the Bureau that it is withdrawing the agreement, as required by final § 1005.19(b)(3) and as explained in final comment 19(b)(3)–1.

The Bureau is finalizing comment 19(b)(2)–4, renumbered as comment 19(b)(2)–1, largely as proposed, with several minor revisions for clarity and conformity with the revisions to § 1005.19(b)(1). Final comment 19(b)(2)–1 explains that if an agreement previously submitted to the Bureau is amended, final § 1005.19(b)(2) requires the issuer to submit the entire revised agreement to the Bureau. This comment further explains that an issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. 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. This comment does not refer to Regulation Z comment 58(c)(3)–4 for additional guidance because the Bureau does not believe the example illustrated in comment 58(c)(4)–4 regarding APRs would be useful for prepaid account issuers. The Bureau continues to believe 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 customarily incorporate revised terms into their prepaid account agreements on a regular basis rather than only issue separate riders or notices.

19(b)(3) Withdrawal of Agreements No Longer Offered

The Bureau proposed § 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) mirrored the Regulation Z provisions regarding withdrawal of agreements previously submitted to the Bureau in Regulation Z § 1026.58(c)(4). Proposed comment 19(b)(3)–1 would have referenced Regulation Z comment 58(c)(4)–1 for a specific example regarding withdrawal of submitted agreements as the Bureau intended 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 issuers 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.[534] The Bureau did 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 believed 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.

The Bureau received one comment from a consumer group on this aspect of the proposal. The consumer group argued that issuers with programs that have a significant number of open accounts whose agreements are no longer offered to the public should be required to submit such agreements to the Bureau, with a notation that the agreement is no longer offered. This commenter explained that doing so would avoid confusion about active programs that would otherwise be absent from the Bureau's Web site and would allow users to compare those programs to newer programs. The Bureau does not believe such a requirement is necessary at this time in light of the limited benefits to consumers, and thus declines to require

[534] 74 FR 54124, 54189 (Oct. 21, 2009).

the submission of agreements of open accounts that are no longer offered to the public.

The Bureau is therefore finalizing § 1005.19(b)(3) and its related commentary substantially as proposed, with several modifications for clarity and consistency with the revisions to § 1005.19(b)(1) to change the time period in which issuers must submit agreements to the Bureau from a quarterly basis to a rolling basis. The Bureau has also made several revisions to conform with the changes made to the proposed definition of ''offers,'' reflected in final § 1005.19(a)(5) and (6), discussed above. Specifically, final § 1005.19(b)(3) provides that if an issuer no longer offers a prepaid account agreement that was previously submitted to the Bureau, the issuer must notify the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the issuer ceases to offer the agreement that it is withdrawing the agreement. Upon further consideration, the Bureau believes that it is necessary to provide clarification on what it means for a prepaid account to no longer be offered. Therefore, the Bureau has revised comment 19(b)(3)–1 to clarify that an issuer no longer offers an agreement when it no longer allows a consumer to activate or register a new account in connection with that agreement. In addition, final comment 19(b)(3)–1 does not refer to Regulation Z comment 58(c)(4)–1 for additional guidance because comment 58(c)(4)–1 describes a scenario in which an issuer must notify the Bureau that it is withdrawing an agreement by a quarterly submission deadline, which is not relevant to final § 1005.19(b)(3).

19(b)(4) De Minimis Exception

The Bureau's Proposal

The Bureau proposed § 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 have stated 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 have applied 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.[535] The Board therefore established a de minimis exception based on an issuer's total number of open accounts in what is now Regulation Z § 1026.58(c)(5). The Bureau believed that the same issues apply in attempting to define a ''prepaid account program'' for purposes of a de minimis threshold, and therefore similarly proposed 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 proposed 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 sought 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, at the time of the proposal, the Bureau did not have specific data that would permit it to accurately determine a comparable threshold for prepaid accounts.

As the Bureau explained in the proposal, recent public data indicated 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) came 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.[536] 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 indicated 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.[537] Furthermore, the data in this report included a number of other types of prepaid products beyond commercial cards that were 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.[538] 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.[539]

Proposed comment 19(b)(4)–1 would have explained 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 have stated that if an issuer that previously qualified for the de minimis

[535] 74 FR 54124, 54191 (Oct. 21, 2009).

[536] HSN Consultants, Inc., *The Nilson Report, Issue 1035,* at 8, 10–11 (Feb. 2014), and HSN Consultants, Inc., *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* HSN Consultants, Inc., *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.

[537] 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.

[538] One issuer was reported to have 14,000 cards in circulation, another had 16,000, and a third had 18,000.

[539] Nilson reports that the top-50 prepaid issuers accounted for some $118 billion in purchase volume in 2013. HSN Consultants, Inc., *The Nilson Report, Issue 1043,* at 1 (June 2014). One leading consultancy estimated load on open-loop prepaid products for that year at over $242 billion. Mercator Advisory Group, *Eleventh Annual U.S. Prepaid Cards Market Forecasts, 2014–2017* (Nov. 2014).

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 have referred 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 have also referred 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 have stated 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 have also referred 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) mirrored the provisions regarding the de minimis exception in Regulation Z § 1026.58(c)(5), except for the lower proposed de minimis threshold figure. Proposed comments 19(b)(4)–1 to –5 mirrored Regulation Z comments 58(c)(5)–1 to –5, although proposed comments 19(b)(1)–2 to –5 were shortened to cross-reference the parallel comments in Regulation Z for specific examples regarding the de minimis exception as the Bureau intended 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 were removed as the Bureau did not believe that exception was relevant in the prepaid card context, as discussed above.

Comments Received

The Bureau received comments from several credit unions, a credit union trade association, and consumer groups regarding this portion of the proposal. The credit unions and the trade association indicated that they appreciated the Bureau's proposal to include a de minimis threshold but argued that the proposed de minimis threshold was too low and that overregulating prepaid accounts will negatively impact the dynamic and growing market. These commenters urged the Bureau to raise the threshold to 10,000 open accounts, which they believed would help alleviate burden, especially for small credit unions.

The consumer groups requested that the Bureau either lower the threshold or eliminate the proposed de minimis exception altogether. Responding to the argument about the impact to small issuers, one consumer group stated that small issuers can have some of the highest fees and need public scrutiny. This commenter also stated that submitting agreements to the Bureau is not time-consuming and should not overburden small issuers. Another consumer group argued that the threshold should be lowered to 500 ''active'' accounts, which the commenter defined as any account with a transaction in the prior quarter. This commenter also stated that large banks with ample resources should not be permitted to qualify for a de minimis exception, regardless of the number of accounts they have.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(4) with several revisions explained below. The Bureau has modified § 1005.19(b)(4)(i) to make clear that whether an issuer qualifies for the de minimis exception is determined by the number of open prepaid accounts it has as of the last day of the calendar quarter. Despite changing the submission requirement from quarterly to rolling, the Bureau believes it is appropriate to keep the de minimis exception on a quarterly schedule so that issuers have a measurable time frame to determine whether they qualify for the exception. Final § 1005.19(b)(4)(i) provides that an issuer is not required to submit any prepaid account agreements to the Bureau if the issuer has fewer than 3,000 open prepaid accounts. Final § 1005.19(b)(4)(i) makes clear that if the issuer has 3,000 or more open prepaid accounts as of the last day of the calendar quarter, the issuer must submit to the Bureau its prepaid account agreements no later than 30 days after the last day of that calendar quarter. The Bureau has eliminated proposed § 1005.19(b)(4)(ii), which would have explained an issuer's obligation to make quarterly submissions to the Bureau if it ceased to qualify for the de minimis exception, because this concept is now addressed in final § 1005.19(b)(4)(i). The Bureau is finalizing § 1005.19(b)(4)(iii), renumbered as § 1005.19(b)(4)(ii), which provides 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 submissions to the Bureau on a rolling basis until the issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau. In addition, the Bureau has removed the term ''business'' from the phrase ''last business day'' from the regulatory text of final § 1005.19(b)(4) and its related commentary to simplify the de minimis exception. The Bureau has also made several modifications for clarity and consistency with the revisions to § 1005.19(b)(1) requiring submission to the Bureau on a rolling basis.

The Bureau declines to modify the proposed threshold of 3,000 open prepaid accounts, as requested by some commenters. A more recent version of the public data described above continues to 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. Those issuers (when combined with Discover and American Express, which are the two largest U.S. issuers that are not MasterCard or Visa issuers) now amount to more than 93 percent of total general purpose credit card loans outstanding.[540] 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 three (for total accounts).

In comparison, the same public source now indicates that three of the top 50 Visa and MasterCard prepaid account issuers would fall below a 10,000 threshold, and two of these fall below the 3,000 threshold.[541] Furthermore, as noted above, the data in this report includes a number of other types of prepaid products beyond commercial cards that are outside this

[540] HSN Consultants, Inc., *The Nilson Report, Issue 1081,* at 1, 8, 10–11 (Feb. 2016), and HSN Consultants, Inc., *The Nilson Report, Issue 1083,* at 10–11 (Mar. 2016). Public data for the next tranche of credit card issuers, *i.e.,* issuers 101–150, does not include account volume, but it does include outstandings volume. The lowest outstandings for an issuer in this third 50 cohort are more than 60 percent of the outstandings for the smallest issuer by total account volume in the top-100. *See* HSN Consultants, Inc., *The Nilson Report, Issue 1090,* at 9 (July 2016). 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.

[541] HSN Consultants, Inc., *The Nilson Report, Issue 1091,* at 8–9 (July 2016). One issuer had 3,000 cards in circulation, another had 2,000, and a third had only 1,000.

final rule's definition of prepaid account, such as healthcare and rebates/rewards, creating the likelihood that additional top-50 prepaid issuers would fall below a de minimis threshold of 10,000 open prepaid accounts.[542] Although it remains 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 93 percent accounted for by the top-100 credit card issuers.[543] As noted in the proposal, the de minimis threshold is meant to exempt issuers based on the number of open accounts they have, not on their asset size. Therefore, larger entities (based on asset size) with fewer than 3,000 open accounts as of the last day of the calendar quarter would qualify for the de minimis exception, whereas smaller entities (based on asset size) with 3,000 or more open accounts as of the last day of the calendar quarter would not qualify.

The Bureau has made several changes to the commentary explaining the de minimis exception. Specifically, the Bureau is finalizing comment 19(b)(4)–1, which explains that the de minimis exception in final § 1005.19(b)(4) is distinct from the product testing exception in final § 1005.19(b)(5), as proposed. 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 a product test for a prepaid account program with fewer than 3,000 open accounts, regardless of the issuer's total number of open accounts.

The Bureau is also finalizing comment 19(b)(4)–2, with several modifications for consistency with the revisions to § 1005.19(b)(4). This comment also provides an example of an issuer that qualifies for the de minimis exception. This comment does not refer to Regulation Z comment 58(c)(5)–2 for additional guidance because the Bureau believes it is clearer to include an example that specifically addresses the de minimis exception for prepaid accounts.

Furthermore, the Bureau is finalizing comment 19(b)(4)–3, with modifications for consistency with the revisions to § 1005.19(b)(4). This comment also provides an example illustrating how an issuer determines whether it qualifies for the de minimis exception. This comment does not refer to Regulation Z comment 58(c)(5)–3 for additional guidance because the Bureau believes it is clearer to include an example that explains how an issuer determines whether it qualifies for the de minimis exception for prepaid accounts. The Bureau has also removed from final comment 19(b)(4)–3 the word ''business'' from the phrase ''last business day,'' as explained above.

In addition, the Bureau is finalizing comment 19(b)(4)–4 with modifications for consistency with the revisions to § 1005.19(b)(4). This comment also provides an example illustrating how an issuer determines whether it ceases to qualify for the de minimis exception. This comment does not refer to Regulation Z comment 58(c)(5)–4 for additional guidance because the Bureau believes it is clearer to include an example that explains how an issuer determines whether it ceases to qualify for the de minimis exception for prepaid accounts. The Bureau has also removed from final comment 19(b)(4)–4 the word ''business'' from the phrase ''last business day,'' as explained above.

Finally, the Bureau is finalizing comment 19(b)(4)–5 with modifications for clarity and consistency with the revisions to § 1005.19(b)(1) and (4). This comment does not refer to Regulation Z comment 58(c)(5)–5 for additional guidance because the Bureau believes it is clearer to include an example regarding the issuer's option to withdraw agreements when it qualifies for the de minimis exception for prepaid accounts. Thus, final comment 19(b)(4)–5 explains that if an issuer qualifies for the de minimis exception, the issuer has two options. The issuer may either notify the Bureau that it is withdrawing the agreements and cease making rolling submissions to the Bureau or not notify the Bureau and continue making rolling submissions to the Bureau as required by final § 1005.19(b).

19(b)(5) Product Testing Exception

The Bureau's Proposal

The Bureau proposed § 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) mirrored the provisions regarding the product testing exception in Regulation Z § 1026.58(c)(7).

Proposed § 1005.19(b)(5)(i) would have provided 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 have provided 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 have provided 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.

Comments Received

Two consumer groups commented on the Bureau's proposed product testing exception. One of the consumer groups requested that the product testing exception be limited to three months and not be available to a payroll card account program if substantially all of a company's employees are enrolled in that program. The other consumer group stated that the exception should only be granted in response to the Bureau's review.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(5) with several revisions discussed below. The Bureau has modified § 1005.19(b)(5)(i) to make clear that whether an agreement qualifies for the product testing exception is determined based on whether it meets certain criteria as of the last day of the calendar quarter. Despite changing the submission requirement from quarterly to rolling, the Bureau believes it is appropriate to keep the product testing exception on a quarterly schedule so that issuers have a measurable time frame to determine whether they qualify for the exception. Final § 1005.19(b)(5)(i) provides that an issuer is not required to submit a prepaid account agreement to the Bureau if as of the last day of the calendar quarter the agreement is

[542] *Id.* at 8. One issuer was reported to have 13,000 cards in circulation and another had 14,000.

[543] Nilson reports that the top-50 prepaid issuers accounted for some $145 billion in purchase volume in 2015. HSN Consultants, Inc., *The Nilson Report, Issue 1091,* at 1, 8–9 (July 2016). One leading consultancy has projected load on open-loop prepaid products for that year at over $280 billion. *See* Mercator 12th Annual Market Forecasts at 8.

offered as part of a product test offered to only a limited group of consumers for a limited period of time; is used for fewer than 3,000 open prepaid accounts; and is not offered other than in connection with such a product test. Final § 1005.19(b)(5)(i) makes clear that if an agreement fails to meet the product testing criteria set forth in final § 1005.19(b)(5)(i)(A) through (C) as of the last day of the calendar quarter, the issuer must submit to the Bureau that agreement no later than 30 days after the last day of that calendar quarter. The Bureau has eliminated proposed § 1005.19(b)(5)(ii), which would have explained an issuer's obligation to make quarterly submissions to the Bureau if an agreement ceased to qualify for the product testing exception, because this concept is now addressed in final § 1005.19(b)(5)(i). Furthermore, the Bureau is finalizing § 1005.19(b)(5)(iii), renumbered as final § 1005.19(b)(5)(ii), which provides 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 submissions to the Bureau on a rolling basis with respect to that agreement until the issuer notifies the Bureau that the issuer is withdrawing the agreement. In addition, the Bureau has removed the term ''business'' from the phrase ''last business day'' from final § 1005.19(b)(5)(i) to simplify the product testing exception. The Bureau has also made several modifications for clarity and consistency with the revisions to § 1005.19(b)(1) requiring submission to the Bureau on a rolling basis.

The Bureau believes that requiring issuers to submit agreements that would qualify for the product testing exception would provide little benefit at this time. Specifically, consumers would not benefit from comparison shopping as the agreements would only be offered to discrete, targeted groups for a limited period of time. For similar reasons, the submission of these agreements would only minimally assist the Bureau's market monitoring efforts. In addition, the Bureau understands that preparing and submitting agreements used for a small number of prepaid accounts in connection with a product test could result in administrative burden to issuers that would likely not be justified by the consumer benefit at this time.

The Bureau declines to add to additional requirements or modifications to this portion of the final rule, as requested by some commenters. The Bureau does not believe it is necessary at this time to disallow a payroll card account program from qualifying for the product testing exception if most of a company's employees are enrolled in that program, as suggested by one commenter. The Bureau also declines to limit the product testing exception to three months, as requested by another commenter, because efforts to test new prepaid account strategies and products can vary significantly, and the Bureau does not have the necessary data at this time to determine what an appropriate time frame would be. The Bureau notes, however, that this exception is intended for the testing of new products and strategies that spans a limited period of time, and the Bureau expects issuers will avail themselves of the exception only when their agreements meet the specific criteria set forth in final § 1005.19(b)(5). Finally, the Bureau also declines to grant the product testing exception only in response to the Bureau's review, as recommended by a commenter, because it does not believe it is necessary to do so at this time. However, the Bureau intends to monitor industry practices in this area and will consider modifications in future rulemakings, if warranted.

19(b)(6) Form and Content of Agreements Submitted to the Bureau

Section 1005.19(b)(6) sets forth the form and content requirements for prepaid account agreements submitted to the Bureau. The Bureau is finalizing § 1005.19(b)(6) largely as proposed, with several modifications as discussed below.

19(b)(6)(i) Form and Content Generally

The Bureau proposed § 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 have provided 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 was similar to Regulation Z comment 58(c)(8)–1.

Proposed § 1005.19(b)(6)(i) would have also stated that agreements must not include any personally identifiable information relating to any consumer, such as name, address, telephone number, or account number. Proposed § 1005.19(b)(6)(i) would have also stated that 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 have required that agreements must be presented in a clear and legible font.

Proposed § 1005.19(b)(6)(i) generally mirrored the provisions in Regulation Z § 1026.58(c)(8)(i) regarding the form and content of agreements that would be submitted to the Bureau. This provision would have excluded, however, two additional items listed in Regulation Z § 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 advertisements—because the Bureau did not believe these items were relevant in the prepaid account context.

The Bureau received no comments specifically addressing § 1005.19(b)(6)(i) and is therefore finalizing it as proposed, with modifications for consistency with the revisions to proposed § 1005.19(b)(1) to change the time period in which issuers must submit agreements to the Bureau from a quarterly basis to a rolling basis. The Bureau notes that final § 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 final § 1005.19. As indicated by the use of the term ''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 § 1005.19 from choosing to include these items in submitted agreements.

The Bureau received comments from several consumer groups and one credit union trade association regarding the Bureau's request for comment about whether issuers should be required to post agreements on their Web sites in an electronic format that is readily usable by the general public, or whether issuers should be required to provide agreements using, for example, a machine-readable text format, such as JSON or XML, that could be used by the Bureau or third parties to more easily create comparison shopping tools.[544] The consumer groups argued that agreements should be submitted in a machine-readable text format because this format would allow researchers and other third parties to analyze information more easily and create comparison shopping tools. The credit union trade association disagreed, however, arguing that requiring agreements to be submitted in a format other than PDF would impose substantial software engineering fees on issuers. The Bureau appreciates the comments it received and continues to believe that it is important for issuers to submit agreements in a machine-readable format for these agreements to be useful to both the Bureau in its market monitoring efforts and to the consumers and other parties reviewing agreements on the Bureau's Web site in the future. The Bureau will provide technical specifications that will include details regarding appropriate file formats that the Bureau expects issuers will use when submitting new agreements and amended agreements following a substantive change.

The Bureau also received comments from several consumer groups and a labor organization requesting that in addition to including with each submission the names of the bank issuer, program manager, and branding entity (such as an employer, organization, institution of higher education), and other names that might be associated with a prepaid account (such as the entity that provides customer support), agreements should be searchable by such information. One of these commenters explained that many issuers use marketing or other affinity related names that make it difficult for a consumer to know which entity issued the prepaid account. The Bureau has considered these comments will consider incorporating such search functionality into its Web site.

The Bureau is finalizing comment 19(b)(6)–1 substantially as proposed, with several modifications for clarity and consistency with the revisions to § 1005.19(b)(1). In addition, the Bureau has removed from final comment 19(b)(6)–1 the reference to ''offers to the public'' and leaving only the term ''offers'' to reflect the changes to § 1005.19(a)(5) as discussed. Specifically, final comment 19(b)(6)–1 explains that agreements submitted to the Bureau must contain the provisions of the agreement and fee information currently in effect. 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. The change in that fee will become effective on August 1. The issuer must submit and post the amended agreement with the decreased out-of-network ATM withdrawal fee to the Bureau by August 31 as required by final § 1005.19(b)(2) and (c).

19(b)(6)(ii) Fee Information

The Bureau proposed § 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 would have been required to contain all of the fee information, which was defined by proposed § 1005.19(a)(3) as the information listed for the long-form fee disclosure in proposed § 1005.18(b)(2)(ii).

Proposed § 1005.19(b)(6)(ii) deviated from the provisions governing pricing information in Regulation Z § 1026.58(c)(8)(ii) in that the proposed language would have permitted, but did not require, prepaid account fee information to be provided in an addendum to the prepaid account agreement. Proposed § 1005.19(b)(6)(ii) also omitted the provisions contained in Regulation Z § 1026.58(c)(8)(ii)(B) and (C) that address how to disclose pricing information that varies from one cardholder to another (such as APRs) 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 did not believe these provisions were either applicable or necessary with respect to prepaid account agreements. The Bureau likewise did not propose an equivalent to Regulation Z § 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 likewise did not propose a comment equivalent to that of Regulation Z comment 58(c)(8)–2 regarding pricing information, nor that of Regulation Z comment 58(c)(8)–4 regarding the optional variable terms addendum.

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.[545] The Bureau did not believe that prepaid account agreements vary in the same manner.

Proposed comment 19(b)(6)–2, which is largely similar to Regulation Z comment 58(c)(8)–3, would have explained 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 would have been required to 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 have constituted 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. Under

[544] The Bureau solicited comment on this issue in the section-by-section analysis of proposed § 1005.19(b)(2); however, the Bureau believes it is more appropriate to discuss this issue here in the section-by-section analysis § 1005.19(b)(6)(i), regarding the requirements for the form and content of the agreements submitted to the Bureau.

[545] 75 FR 7658, 7769 (Feb. 22, 2010).

the proposal, 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.

The Bureau received comments from several consumer groups requesting that fee information be searchable separately from the terms and conditions. These commenters argued that consumers and other parties reviewing agreements on the Bureau's Web site will only want to compare fee schedules and that many will only be interested in the short form disclosures, which should include most of the relevant fees.

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(6)(ii) as proposed, with modifications for consistency with the revisions to § 1005.19(b)(1) to change the time period in which issuers must submit agreements to the Bureau from quarterly to rolling. The Bureau continues to believe that permitting issuers to submit fee information either in a prepaid account agreement or in a single addendum to that agreement provides issuers flexibility in submitting the fee information, while ensuring that consumers and other users of the database have access to such information. For example, for some issuers, requiring fee information to be provided in a separate addendum to the agreement might increase the administrative burden related to submitting a separate document to the Bureau.

In addition, the Bureau continues to believe that, unlike credit card issuers, prepaid account issuers do not typically offer a range of terms and conditions or make those terms and conditions available in a variety of different combinations, particularly with respect to items included in the pricing information. Therefore, the Bureau does not believe it would be difficult for consumers to find fee information if it is integrated into the text of the agreement.

The Bureau is finalizing comment 19(b)(6)–2 with several modifications to explain that issuers are not permitted to disclose fee information that varies from one consumer to another by providing a range of the possible fee variations; rather, issuers must disclose such fee information by setting forth all the possible variations. Upon further consideration, the Bureau believes that providing a range of possible fee variations would not present a clear picture of what the actual fees are and therefore would not be as helpful to the Bureau in its market monitoring, or to consumers or third parties in the future when prepaid account agreements are posted to the Bureau's Web site. Therefore, final comment 19(b)(6)–2 explains that 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. The Bureau has removed from final comment 19(b)(6)–2 the explanation that two agreements that differ only with respect to variations in the fee information do not constitute separate agreements, as the Bureau does think the comment is necessary. The Bureau has also revised the example in final comment 19(b)(6)–2 to explain that if an issuer offers a prepaid account with a monthly fee of $4.95 or $0 if the consumer regularly receives direct deposit to the prepaid account, the issuer must submit to the Bureau one agreement with fee information listing the possible monthly fees of $4.95 or $0 and including an explanation that the latter fee is dependent upon the consumer regularly receiving direct deposit.

19(b)(6)(iii) Integrated Agreement

The Bureau proposed § 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 would have been required to be integrated into the text of the agreement, or the optional fee information addendum, as appropriate. Proposed comment 19(b)(6)–3 would have provided 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) was similar to Regulation Z § 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 Bureau modified the proposed language 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 was similar to Regulation Z comment 58(b)–5.

The Bureau received no comments on this aspect of the proposal and is therefore finalizing § 1005.19(b)(6)(iii) as proposed with minor revisions for clarity. The Bureau continues to believe 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.

In addition, the Bureau believes that, unlike credit card agreements, a single prepaid account agreement does not typically contain a variety of variable terms predicated on the consumer's credit worthiness or other factors. With respect to Regulation Z § 1026.58(c)(8)(iv), 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.[546] 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. Furthermore, the Bureau does not believe that prepaid account issuers modify the terms of prepaid account agreements as frequently as credit card issuers do. Therefore, the Bureau does not believe this requirement would significantly burden issuers.

The Bureau is finalizing comment 19(b)(6)–3 substantially as proposed, with revisions to simplify the example that explains that an issuer would not be permitted to submit to the Bureau an agreement in the form of a terms and conditions document and subsequently submit a change-in-terms notice or an addendum to indicate amendments to the previously submitted agreement.

[546] *See* 75 FR 7658, 7770 (Feb. 22, 2010).

Bureau Posting of Prepaid Account Agreements

The Bureau's Proposal

The Bureau proposed § 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 Regulation Z § 1026.58 as the Bureau's posting of credit card agreements it receives is directed by TILA section 122(d).[547]

Comments Received

The Bureau received several comments from consumer groups, State government agencies, and industry, including industry and credit union trade associations and credit unions, regarding the proposal to post prepaid account agreements to the Bureau's publicly available Web site.[548] The industry commenters opposed this portion of the proposal, arguing that it is unnecessary and would provide little to no consumer benefit. These commenters argued that consumers would not likely visit the Bureau's Web site to compare prepaid account agreements, especially when consumers can obtain agreements from other sources, such as the issuer's Web site or otherwise prior to acquisition. These commenters also expressed concern that the version of an agreement on the Bureau's Web site might differ from the version on the issuer's Web site, causing consumer confusion.

Furthermore, as discussed in the section-by-section analysis of § 1005.19(a)(8) above, several industry commenters, including issuing banks, industry trade associations, program managers, a think tank, and a law firm writing on behalf of a coalition of prepaid issuers, urged the Bureau to exclude agreements that are not offered to the public (such as payroll card, government benefit, and campus card accounts) from being posted to the Bureau's publicly available Web site. These commenters explained that for these types of accounts, an issuer could have thousands of agreements that have been negotiated between the issuer and a third party (such as an employer, a government agency, or a university) and that are often tailored to fit the needs of individual programs. These commenters stated that such volume and variety would clutter the Bureau's Web site, overwhelm consumers, and cause confusion because consumers might not understand which agreement applies to their account or why the terms differ. These commenters stated that even if consumers could navigate the volume of agreements, the third party—not the consumers—chooses these agreements, so comparison shopping would not be an option. In addition, these commenters stated that the public posting of these agreements raises confidentiality concerns regarding the disclosure of proprietary account features, which would compromise the issuer's ability to negotiate customized account agreements. These commenters also argued that a public posting requirement would undermine competition because it would inhibit the incentive for companies to develop novel products.

Several consumer groups and the office of a State Attorney General supported a requirement to post all agreements, including agreements that are not offered to the public, on the Bureau's publicly available Web site because they believed it would encourage competition and transparency, which they stated would help lower fees, and facilitate comparison shopping, which they said would result in more informed consumer decisions. One consumer group argued that the public posting of agreements would assist the Bureau, researchers, and consumer advocates in compiling information to issue reports and shed light on inappropriate practices by market participants.

With respect to publicly posting agreements that are not offered to the public, one consumer group asserted that the payroll card market, in particular, is secretive and issuers and employers in this market do not generally provide fee schedules when asked. This commenter added that when it began issuing reports on unemployment compensation cards, fees started to come down. This commenter also argued that employers, government agencies, nonprofit organizations, and other entities considering a prepaid card program would be able to see and compare the various terms offered in the market. This commenter further argued that, while payroll card issuers may have confidentiality clauses in their contracts with employers, those clauses do not bind employees because once a card is issued to an employee, the agreement is no longer confidential. Finally, the office of a State Attorney General argued that even though consumers who enroll in payroll card programs are not typically able to comparison shop because the employer selects their program, they would still be able to compare their plan with other wage payment options, such as a checking account, direct deposit, and other prepaid accounts.

One trade association argued that the Bureau lacks authority to post prepaid account agreements to its Web site. This commenter argued that EFTA is concerned specifically with EFTs, not bank accounts generally or non-electronic transactions, such as cash and check deposits, which are features of prepaid accounts. This commenter also argued that EFTA focuses on the rights, liabilities, and responsibilities of participants with regard to EFTs, not the consumer's ability to shop for bank accounts or understand the cost of the accounts. This commenter further stated that if EFTA was intended to ensure that consumers could understand the costs of their prepaid accounts and to be able to shop, EFTA would require the disclosure of all fees, not just charges associated with EFTs and certain ATM fees. Furthermore, this commenter argued that the Bureau's authority under section 1022 of the Dodd-Frank Act to monitor risk for consumers in financial products and to gather information regarding financial service markets does not allow the Bureau to post agreements on its Web site. Regarding the Bureau's authority under section 1032(a) of the Dodd-Frank Act, this commenter stated that consumers will already have the ability to understand the costs, benefits, and risks associated with prepaid accounts by obtaining the information from the issuer's Web site or otherwise prior to acquisition, and therefore, posting the agreements on the Bureau's Web site is unnecessary. This commenter further stated that, if Congress had intended for issuers to submit agreements to the Bureau (as it did for credit card agreements under TILA), it would have specifically required it in the Dodd-Frank Act.

The Final Rule

Upon further consideration, the Bureau believes it is unnecessary to finalize § 1005.19(b)(7). Consistent with its request for comment, the Bureau intends to publish on its Web site in the future the agreements that issuers have submitted pursuant to final § 1005.19(b). Given that the requirement speaks to the Bureau's actions and not to regulated entities, however, there is no need to finalize the provision through regulatory text.

The Bureau continues to believe that posting prepaid accounts agreements

[547] 15 U.S.C. 1632(d).

[548] Commenters generally addressed the public posting requirements in proposed § 1005.19(b) and (c) together. There are thus some overlaps between the comments summarized here and those in the section-by-section analysis of § 1005.19(c) below.

that are offered will benefit consumers, as it will 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. The Bureau believes it is important to publicly post the agreements of all prepaid accounts, including accounts whose agreements are not offered to the general public, such as payroll cards, government benefit, and campus card accounts, because publicly posting these agreements will encourage competition and increase transparency. Regarding agreements that are not offered to the public, the Bureau agrees with one of the commenters that consumers can still compare these agreements with other wage payment options, despite not being able to choose their program. The Bureau also agrees with another commenter that publicly posting these agreements will allow employers, government agencies, and nonprofit organizations, and other entities considering a prepaid account program to see and compare the various terms offered in the market.

As discussed above, the Bureau proposed and is finalizing § 1005.19 pursuant to its authority in section 1022(c)(4) of the Dodd-Frank Act. Under section 1022(c)(3) of the Dodd-Frank Act, the Bureau ''shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year,'' and ''may make public such information obtained by the Bureau under this section as is in the public interest.'' As discussed above, the Bureau is requiring submission of this information to the Bureau under section 1022(c)(1) of the Dodd-Frank Act, which directs the Bureau to 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, and section 1022(c)(4), which provides the Bureau with authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.

19(c) Posting of Agreements Offered to the General Public

The Bureau's Proposal

The Bureau proposed § 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) would have been required to 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 would have been permitted to be posted in any electronic format that is readily usable by the general public. Agreements posted pursuant to proposed § 1005.19(c) would have been required to be accurate and updated whenever changes are made. Agreements would have been required to be placed in a location that is prominent and readily accessible by the public and without submission of personally identifiable information.

Regulation Z § 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.[549] The Bureau believed that prepaid account issuers generally update their agreements posted online as changes are made. The Bureau did not believe that prepaid account issuers would 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 proposed in § 1005.19(c)(3) that prepaid account agreements posted only be accurate and that issuers update their agreements whenever changes are made.

Proposed comment 19(c)–1 would have explained 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 EFT service or before the first EFT is made involving the consumer's account, as well as the change-in-terms notice required under § 1005.8(a). This requirement would have also been distinct from that of proposed § 1005.18(b)(2)(ii), which would have required 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, would have required 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 would not have been required to post and maintain any agreements on its Web site under proposed § 1005.19(c). The issuer would have still been 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 have also been 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 have explained 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 would have been considered to maintain that Web site for purposes of proposed § 1005.19. Such a third-party Web site would have been 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 would have been able to 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).

[549] 75 FR 7658, 7772 (Feb. 22, 2010).

Proposed § 1005.19(c) was similar to Regulation Z § 1026.58(d), but did not include provisions regarding private label credit cards, as discussed above. Specifically, the Bureau did not propose an equivalent to the provision addressing the Web site to be used for posting private label credit card agreements in Regulation Z § 1026.58(d)(1) as well as Regulation Z § 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 was similar to Regulation Z comment 58(d)–1, although the Bureau had modified it to distinguish the requirement in proposed § 1005.19(c) from other disclosure-related obligations in Regulation E. Proposed comment 19(c)–2 would have mirrored Regulation Z comment 58(d)–2, although the Bureau had modified both it and proposed comment 19(c)–1 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, was likewise omitted.

Comments Received

The Bureau received comments from consumer groups, State government agencies, and industry commenters (including trade associations, credit unions, a program manager, and a payment network) regarding the proposed posting requirement in § 1005.19(c).[550] The industry commenters argued that the proposed posting requirement would burden industry and provide little to no consumer benefit. These commenters explained that the proposed requirement would be problematic for issuers as they would have to constantly update their Web site with new and revised agreements. One of the credit unions argued that the requirement would be an intrusion into its business practices, but also stated that issuers already post agreements online without direction from the Bureau. Several commenters expressed concern that the version of an agreement on the Bureau's Web site might differ from the version on the issuer's Web site, causing consumer confusion.

Furthermore, as discussed in the section-by-section analysis of § 1005.19(a)(8) above, several industry commenters, including issuing banks, industry trade associations, program managers, a think tank, and a law firm writing on behalf of a coalition of prepaid issuers, urged the Bureau to exclude agreements that are not offered to the public (such as payroll card, government benefit, and campus card accounts) from the requirement in proposed § 1005.19(c) to post agreements to the issuer's publicly available Web site. These commenters explained that for these types of accounts, an issuer could have thousands of agreements that have been negotiated between the issuer and a third party (such as an employer, a government agency, or a university) and that are often tailored to fit the needs of individual programs. These commenters stated that such volume and variety would clutter the issuer's Web site, overwhelm consumers, and cause confusion because consumers might not understand which agreement applies to their account or why the terms differ. These commenters stated that even if consumers could navigate the volume of agreements, the third party—not the consumers—chooses these agreements, so comparison shopping would not be an option. In addition, these commenters stated that the public posting of these agreements raises confidentiality concerns regarding the disclosure of proprietary account features, which would compromise the issuer's ability to negotiate customized account agreements. These commenters also argued that a public posting requirement would undermine competition because it would inhibit the incentive for companies to develop novel products.

Several consumer groups and the office of a State Attorney General supported a requirement to post all agreements, including agreements that are not offered to the public, on the issuer's public Web site because they believed it would encourage competition and transparency, which they stated would help lower fees, and facilitate comparison shopping, which they stated would result in better informed consumer decisions. One consumer group argued that the public posting of agreements would assist the Bureau, researchers, and consumer advocates in compiling information to issue reports and shed light on inappropriate practices by some market participants.

With respect to publicly posting agreements that are not offered to the public, one consumer group explained that the payroll card market, in particular, is secretive and issuers and employers in this market do not generally provide fee schedules when asked. This commenter added that when it began issuing reports on unemployment compensation cards, fees started to come down. This commenter also argued that employers, government agencies, nonprofit organizations, and other entities considering a prepaid card program would be able to see and compare the various terms offered in the market. This commenter further argued that, while payroll card issuers may have confidentiality clauses in their contracts with employers, those clauses do not bind employees because once the card is issued to an employee, the agreement is no longer confidential. Finally, the office of a State Attorney General argued that even though consumers who enroll in payroll card programs are not typically able to comparison shop because the employer selects their program, they would still be able to compare their plan with wage other payment options, such as a checking account, direct deposit, and other prepaid accounts.

Regarding whether the Bureau should specify a timeframe for updating agreements posted on the issuer's Web site, one credit union requested that the Bureau not designate a timeframe, and one consumer group requested that the Bureau require issuers to post agreements within seven business days of issuing the agreement.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.19(c) generally as proposed, with several modifications. The Bureau has revised § 1005.19(c)(1) to exclude prepaid account agreements that are not offered to the general public from the requirement that issuers post agreements to their publicly available Web sites. In addition, the Bureau has revised § 1005.19(c)(3) to clarify that an issuer must post on its publicly available Web site and update the posted agreements as frequently as the issuer is required to submit new and amended agreements to the Bureau pursuant to § 1005.19(b). The Bureau has also made several minor revisions for clarity and consistency.

The Bureau continues to believe that the general requirement to post prepaid account agreements on the issuer's publicly available Web site will increase transparency in the terms of these agreements and the amounts of the fees assessed against the prepaid accounts. The increased transparency will allow the public and consumers to become better informed about these accounts, which will likely encourage competition and improve fees in the various markets.

[550] These commenters generally addressed the public posting requirements in proposed § 1005.19(b) and (c) together. There are thus some overlaps between the comments summarized here and those in the section-by-section analysis of § 1005.19(b) under *Bureau Posting of Prepaid Account Agreements* above.

Furthermore, the public posting of agreements will allow consumers to compare the terms and fees among various agreements. In addition, the Bureau does not believe this general requirement will be problematic for issuers, as posting agreements on the issuer's Web site is consistent with industry practice today.

The Bureau is persuaded, however, that posting to the issuer's publicly available Web site agreements that are not offered to the general public may impose unnecessary administrative burden and have little consumer benefit. The Bureau understands that issuers of payroll card, government benefit, campus card, and other types of accounts whose agreements are not offered to the general public could potentially have thousands of agreements to post and maintain on their publicly available Web sites, which could take a considerable amount of time and resources to set up and maintain without necessarily being easy for consumers to navigate. In addition, the Bureau believes that consumers who use these types of accounts would not likely visit the issuer's general Web site to access their individual agreements. The Bureau notes that issuers of these accounts are still required to provide each individual consumer with access to his or her specific prepaid account agreement under § 1005.19(d), discussed below, and to submit the agreements to the Bureau under § 1005.19(b) (unless the de minimis exception under final § 1005.19(b)(4) or the product testing exception under final § 1005.19(b)(5) applies). In contrast, the Bureau believes that there are benefits to consumers and third parties in having agreements not available to the general public posted all in one place on the Bureau's Web site. See the section-by-section analysis of § 1005.19(a)(8) above.

The Bureau is finalizing comments 19(c)–1 and –2 generally as proposed, with several modifications for clarity and consistency with the revisions to § 1005.19(c) discussed above.

Final comment 19(c)–1 explains the differences between final § 1005.19(c) and other provisions in § 1005.19, as well as other requirements elsewhere in of Regulation E, and clarifies that, for agreements that are not offered to the general public, the issuer is not required to post and maintain the agreements on its publicly available Web site, but is still required to provide each individual consumer with access to his or her specific prepaid account agreement under § 1005.19(d). This comment also clarifies the requirements for issuers that are not required to submit agreements to the Bureau because they qualify for the de minimis exception under § 1005.19(b)(4) or the agreements qualify for the product testing exception under § 1005.19(b)(5). In addition, this final comment does not contain the proposed explanation that an issuer that is not required to submit agreements to the Bureau may be required to post the long form disclosure required by proposed § 1005.18(b)(2)(ii) online, depending on the methods by which the issuer offers prepaid accounts to consumers, as the Bureau does not believe it is necessary to include this clarification in commentary.

Final comment 19(c)–2 explains that, if an issuer offers an agreement to the general public as defined by § 1005.19(a)(6), that issuer must post that agreement 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

19(d)(1) Availability of an Individual Consumer's Prepaid Account Agreement

The Bureau's Proposal

The Bureau proposed § 1005.19(d)(1) to provide 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. Agreements posted pursuant to proposed § 1005.19(d) would have been permitted to 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 would have been required to provide the consumer with the ability to request a copy of the agreement by telephone. The issuer would have been required to 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.

Proposed comment 19(d)–1, which was similar to Regulation Z comment 58(e)–1, would have provided 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 have been 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 have been required to be submitted to the Bureau under proposed § 1005.19(b), but would still have been required to be provided to the consumer to whom it applies under proposed § 1005.19(d).

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.[551]

The Bureau did 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 thus proposed 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.

Regulation Z § 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

[551] *See* 74 FR 54124, 54192 (Oct. 21, 2009).

well as by telephone. The Bureau believed that prepaid account issuers would 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 expected 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 did not believe it was necessary to require issuers to receive requests via their Web sites, although issuers could certainly allow consumers to make requests in that manner if they so choose.

Regulation Z § 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 proposed to require prepaid account issuers to provide telephone numbers for a variety of other purposes,[552] the Bureau did not believe it was 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.

Regulation Z § 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 expected that few, if any, issuers would be required to provide agreements upon request pursuant to proposed § 1005.19(d)(1)(ii), it did 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 thus did not propose 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 Regulation Z § 1026.58(e)(2), containing a special provision for issuers without interactive Web sites, was not included in proposed § 1005.19, as the Bureau was 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 did not propose an equivalent to Regulation Z comment 58(e)–3, which provides examples regarding the deadline for providing copies of requested agreements, as the Bureau did not believe such examples were necessary given the more limited ways that issuers are permitted to respond to requests under proposed § 1005.19(d)(1)(ii).

Regulation Z § 1026.58(e)(2) 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.[553]

The Bureau did 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 believed that requiring issuers to provide prepaid account agreements within five business days would give issuers adequate time to respond to requests while providing consumers with prompt access to their prepaid account agreements.

Comments Received

The Bureau received comments from several industry and consumer group commenters on this aspect of the proposal. The commenters generally supported a requirement to provide consumers with access to their individual prepaid account agreements. One industry trade association and one issuing bank argued that an issuer should be required to post and maintain the consumer's payroll card agreement on a portion of the issuer's Web site that is available to the consumer once he or she has logged into his or her account. These commenters suggested that the Bureau provide a statement on its dedicated prepaid account Web site directing consumers of payroll cards to visit their issuer's Web site for a copy of their agreement and to submit a complaint to the Bureau if the consumer has trouble obtaining it (similar to what is included on the Bureau's Web site for credit card agreements).

One consumer group urged the Bureau to require issuers to both post prepaid account agreements on the issuer's Web site and make agreements available in paper form upon the consumer's request, not one or the other. This commenter also requested that the Bureau require issuers to post a consumer's agreement on a password protected section of their Web site, even if the agreement is identical to the one currently offered to the public. This commenter explained that consumers who obtained their accounts in the past will not know that their agreements are the same as those currently offered. This commenter also stated that the ''my account'' area of the Web site is also where consumers will logically search for their agreements. In addition, this commenter urged the Bureau to make clear that issuers may not charge consumers a fee for requesting a copy of their agreement.

One program manager requested that the Bureau strike proposed § 1005.19(d) in its entirety from this final rule. This commenter argued that consumers would need to sort through thousands of agreements—each containing multiple pages—without knowing which account is applicable to their programs. This commenter stated that consumers will not likely seek out a multi-page agreement in order to compare the features of the program most important to that consumer. This commenter also stated that it does not feel comfortable making agreements, which they explained contain proprietary and confidential information, available to the public and subject to the scrutiny of competitors in the marketplace. This commenter stated that employers and other clients with whom the commenter has negotiated certain terms would not be comfortable with their competitors' ability to see the terms that resulted

[552] *See, e.g.,* proposed § 1005.18(b)(7), which would have required disclosure of a telephone number on the prepaid account access device, to be used to contact the financial institution about the prepaid account.

[553] 75 FR 7658, 7773 (Feb. 22, 2010).

from private, business-to-business negotiations. This commenter argued that the risks of exposing sensitive proprietary and confidential information outweighs any potential benefit to consumers. This commenter requested that the Bureau instead require issuers to provide consumers with access to their individual, tailored account agreement via the issuer's Web site, after the consumer's identity has been verified through their login credentials. This commenter stated that this approach would offer a more meaningful outcome and process for consumers since consumers would gain easy access to the exact agreement applicable to their programs.[554]

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.19(d) substantially as proposed, with one revision for clarity. Specifically, final § 1005.19(d) provides that with respect to any open prepaid account, 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 request.

The Bureau continues to believe that it would not be appropriate to apply the de minimis exception, the product testing exception, or the exception for accounts not currently offered to the general public to the requirement that issuers provide consumers with access to their specific prepaid account agreement through the issuer's Web site. The Bureau believes that the benefit of increased transparency of providing individual consumers with access to their specific prepaid account agreements is substantial regardless of the number of open accounts an issuer has and regardless of whether an agreement continues to be offered by the issuer or is offered as part of a product test. In addition, 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 is adopting new comment 19(d)–2, discussed below, to explain the requirements for sending an agreement.

The Bureau declines to modify the provision to require issuers to post an individual consumer's prepaid account agreement on the issuer's Web site *and* make the agreement available in paper form upon the consumer's request, as suggested by a consumer group commenter. The Bureau believes that the administrative burden associated with posting each consumer's agreement on the issuer's Web site might be substantial for some issuers, particularly smaller institutions with limited information technology resources. Therefore, the final rule allows issuers to provide written copies of agreements in response to consumers' requests. The ability to provide agreements in response to a request made via telephone ensures that consumers are still able to obtain copies of their agreements promptly. For similar reasons, the Bureau declines to require issuers to post a consumer's agreement on a password protected section of their Web site, as suggested by a commenter, although issuers may certainly choose to do so for the convenience of their customers. Related, the Bureau reminds issuers that neither they nor their service providers are permitted to charge consumers a fee for requesting a copy of their prepaid account agreement pursuant to § 1005.19(d).

The Bureau is finalizing comment 19(d)–1 largely as proposed, with several modifications for consistency with the revisions to § 1005.19(d)(1) discussed above and to clarify that an issuer that is not required to post on its Web site agreements not offered to the general public must still provide consumers with access to their specific agreements under final § 1005.19(d).

The Bureau is adopting new comment 19(d)–2 to clarify the requirement for providing a consumer a copy of the consumer's agreement no later than five business days after the issuer receives the consumer's request. Specifically, this comment explains that, if the issuer mails the agreement, the agreement must be posted in the mail five business days after the issuer receives the consumer's request. If the issuer hand delivers or provides the agreement electronically, the agreement must be hand delivered or provided electronically five business days after the issuer receives the consumer's request. For example, if the issuer emails the agreement, the email with the attached agreement must be sent no later than five business days after the issuer receives the consumer's request.

19(d)(2) Form and Content of Agreements

The Bureau proposed § 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 have stated 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) would have provided 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 have stated 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 have stated 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 have provided 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) would have been required to be accurate as of the date the agreement is mailed or electronically delivered to the consumer. Proposed § 1005.19(d)(2)(vi) would have stated that agreements provided upon the consumer's 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) was generally similar to Regulation Z § 1026.58(e)(3), except that it contained modifications to reflect the changes in proposed § 1005.19(d)(1) regarding the methods in which prepaid account agreements may be provided to

[554] The Bureau notes that this commenter's concerns were likely in reference to the Bureau's proposed posting requirements in § 1005.19(b)(1) and (c), as proposed § 1005.19(d) would have permitted issuers to provide consumers access to their individual agreements after logging in to their online accounts. However, the Bureau included this comment here because the issuer specifically requested that the Bureau to strike proposed § 1005.19(d) from this final rule.

consumers pursuant to proposed § 1005.19(d). Proposed § 1005.19(d)(2) did not, however, include the provision contained in Regulation Z § 1026.58(e)(3)(iv) that requires agreements for all open 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 Regulation Z § 1026.58(e)(1)(i) or the date the cardholder's request is received under Regulation Z § 1026.58(e)(1)(ii) or (e)(2). As described above, the Bureau did 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 did 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 proposed to require that agreements posted online be accurate and updated when changes are made, and that agreements provided upon the consumer's request be accurate as of the date the agreement is mailed or electronically delivered to the consumer.

The Bureau received no comments on this aspect of the proposal. Accordingly, the Bureau is finalizing § 1005.19(d)(2) substantially as proposed, with modifications for consistency with the revisions to § 1005.19(c)(3). The Bureau has also made a revision to proposed § 1005.19(d)(2)(v) to make clear that agreements provided upon a consumer's request must be accurate as of the date the agreement is sent to the consumer, rather than the date the agreement is mailed or electronically delivered to the consumer. The Bureau believes it is clearer to use the term ''sent'' in final § 1005.19(d)(2) and to explain in final comment 19(d)–2, discussed above, the methods in which a consumer may send an agreement to the consumer. Therefore, in addition to requiring that agreements posted pursuant to § 1005.19(d)(1)(i) must be updated as frequently as the issuer is required to submit amended agreements to the Bureau pursuant to § 1005.19(b)(2), final § 1005.19(d)(2)(v) states that agreements provided upon consumer request pursuant to § 1005.19(d)(1)(ii) must be accurate as of the date the agreement is sent to the consumer.

With respect to the statement in final § 1005.19(d)(2)(iii) regarding agreements containing personally identifiable information relating to the consumer, the Bureau cautions that this is permissible only if the issuer takes appropriate measures to make the agreement accessible only to the consumer or other authorized parties. The Bureau understands that issuers will include a consumer's name and address when mailing agreements. However, the Bureau expects issuers to protect personally identifiable information relating to the consumer as appropriate, or not to include such information in the agreements if it is not necessary to do so.

19(e) E-Sign Act Requirements

The Bureau proposed § 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 the E-Sign Act. 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 Regulation Z § 1026.58.[555] The Bureau proposed § 1005.19(e) for ease of administration of these requirements and for consistency with Regulation Z § 1026.58(f).

The Bureau received several comments from industry supporting the proposal to provide agreements in electronic form without complying with the E-Sign consent requirements. One consumer group recommended the Bureau require compliance with the E-Sign Act for prepaid account information. This commenter explained that a consumer giving E-Sign consent and providing an email address does not necessarily mean the consumer has regular access to the Internet or a computer.

The Bureau continues to believe that it is appropriate to waive the requirement that issuers obtain E-Sign consent from consumers in order to provide prepaid account agreements in electronic form pursuant to § 1005.19(c) and (d), and thus the Bureau is finalizing § 1005.19(e) as proposed.

19(f) Effective Date

The Bureau proposed, in general, a nine month effective date for its rulemaking on prepaid accounts, with an additional three months for certain disclosure-related obligations. Comments regarding the proposed effective date generally are discussed in the detail in the section-by-section analysis of § 1005.18(h) above and in part VI below.

With regard to application of the proposed effective date to the requirements of § 1005.19 in particular, the Bureau received comments from several industry and trade association commenters, arguing that nine months would be insufficient to make the proposed changes. Several commenters expressed concern that issuers would need additional time to comply with the proposed submission and posting requirements pursuant to proposed § 1005.19(b) and (c), respectively, to implement the necessary system and operational changes. These commenters explained that submitting and posting prepaid account agreements would require issuers to develop a process of maintaining inventory for the agreements, create a process to update them on a quarterly basis, and develop a periodic monitoring process to ensure accuracy of these agreements. In addition, these commenters explained that the posting requirement would also require issuers to create a location on their Web sites for the posting of agreements.

The Bureau is adopting an effective date of October 1, 2017 for this final rule generally, which is reflected in new § 1005.19(f)(1), which states that except as provided in new § 1005.19(f)(2), the requirements of final § 1005.19 apply to prepaid accounts beginning on October 1, 2017.

The Bureau is adopting new § 1005.19(f)(2) to establish a delayed effective date of October 1, 2018 for the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to final § 1005.19(b). An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018. The Bureau continues to work to develop a streamlined electronic submission process, which it expects will be fully operational before final § 1005.19(b) becomes effective on October 1, 2018. The Bureau expects to provide technical specifications regarding the electronic submission process in advance of that date. Issuers will have no submission obligations under this provision until the Bureau has issued technical specifications addressing the form and manner for submission of agreements.

In addition, new § 1005.19(f)(3) provides that nothing in new § 1005.19(f)(2) shall affect the requirements to post prepaid account agreements on an issuer's Web site pursuant to final § 1005.19(c) and (d) or the requirement to provide a copy of the

[555] *See* 74 FR 54124, 54193 (Oct. 21, 2009).

consumer's agreement to the consumer upon request pursuant to final § 1005.19(d).

The Bureau is adopting new comment 19(f)–1 to further explain that, if an issuer offers a prepaid account agreement on October 1, 2018, the issuer must submit the agreement to the Bureau, as required by § 1005.19(b), no later than October 31, 2018, which is 30 days after October 1, 2018. After October 1, 2018, issuers must submit on prepaid account agreements or notifications of withdrawn agreements to the Bureau within 30 days after offering, amending, or ceasing to offer the agreements.

The Bureau is also adopting new comment 19(f)–2 to explain that, during the delayed agreement submission period set forth in new § 1005.19(f)(2), an issuer must post agreements on its Web site as required by final § 1005.19(c) and (d)(1)(i) using the agreements it would have otherwise submitted to the Bureau under final § 1005.19(b) and must provide a copy of the consumer's agreement to the consumer upon request pursuant to final § 1005.19(d)(1)(ii). For purposes of § 1005.19(c)(2) and (d)(2), agreements posted by an issuer on its Web site must conform to the form and content requirements set forth in final § 1005.19(b)(6). For purposes of final § 1005.19(c)(3) and (d)(2)(v), amended agreements must be posted to the issuer's Web site no later than 30 days after the change becomes effective as required by final § 1005.19(b)(2).

Prior to the October 1, 2018 effective date for the submission requirement in final § 1005.19(b), the Bureau will issue technical specifications addressing the form and manner for submission of agreements. The Bureau intends to publish a notice in the **Federal Register** to inform issuers when its streamlined electronic submission process is operational in order to on-board all issuers in advance of the October 1, 2018 effective date.

The Bureau reminds credit card issuers that while final § 1005.19(h) provides a delayed effective date of October 1, 2018 to submit prepaid account agreements to the Bureau, the requirement to submit credit card agreements under Regulation Z § 1026.58 for covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan becomes effective with the rest of this final rule on October 1, 2017.

Appendix A–5 Model Clauses for Government Agencies (§ 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 proposed 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 also proposed 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, was available online. The Bureau also proposed 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 had 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 would have also stated that the consumer would not be charged a fee for such information unless the consumer requested it more than once per month. The paragraph would have retained the existing optional bracketed language stating that the consumer could also request such a history by contacting his or her caseworker.

The Bureau similarly proposed 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 proposed 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 proposed 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 accessed 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 have also stated that the consumer could request a written transaction history at any time by calling or writing, or optionally by contacting the consumer's caseworker.

The Bureau did not receive any comments specifically regarding the proposed changes to appendix A–5. As discussed in the section-by-section analyses of §§ 1005.15(d) and 1005.18(c) below, however, the Bureau is revising the proposed time periods that apply to a consumer's right to obtain account information. Under the final rule, consumers will have the right to access up to 12 months of account history online, instead of the 18 months of account history in the proposed rule. In addition, consumers will have the right to request at least 24 months of written transaction history, instead of the 18 months set forth in the proposed rule. The Bureau is revising appendix A–5 to reflect these changed time periods and to make certain other conforming changes, but is otherwise finalizing appendix A–5 as proposed.

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 proposed to revise the heading for existing appendix A–7 as well as the heading for paragraph (a) of appendix A–7. The Bureau also proposed to revise paragraph (a) of appendix A–7, which currently explains to consumers how to obtain account information for payroll card accounts, to change the term payroll card account to prepaid account, and to state 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 proposed to add a sentence at the end of paragraph (a) of appendix A–7 to inform consumers that they could not be charged for requesting such written account transaction history, unless requests were made more than once per month. As discussed above, the Bureau proposed 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 similarly proposed to revise the heading of paragraph (b), and

to revise the text of paragraph (b) of appendix A–7, which currently 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 also proposed 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 with respect to which it had not completed its collection of consumer identifying information and identity verification.

This model language would have stated that it was important for consumers to register their prepaid accounts as soon as possible and that until a consumer registered the prepaid account, the financial institution was not required to research or resolve errors regarding the consumer's account. To register an account, the consumer was directed to a Web site and telephone number. The model language would have explained that the financial institution would 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 could verify the consumer's identity. Once the financial institution had done so, it would address the consumer's complaint or question as described earlier in appendix A–7.[556]

The Bureau did not receive any comments specifically regarding the proposed revisions to appendix A–7. The Bureau is, however, making several revisions to the substantive provisions in § 1005.18(c) and (e) that correspond to the disclosures set forth in appendix A–7, and is revising appendix A–7 to reflect those changes. First, as discussed in the section-by-section analysis of § 1005.18(c) above, the Bureau is revising the proposed time periods that apply to a consumer's right to obtain account information. Under the final rule, consumers will have the right to access up to 12 months of account history online, instead of the 18 months of account history in the proposed rule. In addition, consumers will have the right to request at least 24 months of written transaction history, instead of the 18 months set forth in the proposed rule. The Bureau is revising paragraph (a) of appendix A–7 to reflect these changed time periods.

Second, under the final rule, the Bureau is no longer requiring a financial institution to provide 24 months of written account transaction history upon request, as required under § 1005.18(c)(1)(iii), for prepaid accounts (other than payroll card accounts or government benefit accounts) with respect to which the financial institution has not completed its consumer identification and verification process. To reflect this exception, the Bureau is adding bracketed language clarifying that the language in appendix A–7 informing consumers of their right to request 24 months of written account transaction history only applies to accounts that have been or can be registered with the financial institution.

Third, the Bureau is making several revisions to § 1005.18(e)(3), which, as proposed, would have limited a financial institution's obligation to provide limited liability and error resolution for accounts with respect to which the financial institution had not completed its collection of consumer identifying information and identity verification. Under the final rule, financial institutions must provide limited liability and error resolution protections for all prepaid accounts, regardless of whether the financial institution has completed its consumer identification and verification process with respect to the account. However, for accounts with respect to which the financial institution has not completed its identification and verification process (or for which the financial institution has no such process), the financial institution is not required to provisionally credit the consumer's account in the event the financial institution takes longer than 10 or 20 business days, as applicable, to investigate and determine whether an error occurred.

To reflect these changes, the Bureau is revising paragraphs (b) and (c) of appendix A–7 as follows. The Bureau is revising the language in paragraph (b) describing a consumer's right to receive provisional credit in certain circumstances to reflect that, under the final rule, an account must be registered with the financial institution in order to be eligible for provisional credit. The Bureau is also revising paragraph (c), which under the final rule is only applicable to prepaid accounts that have a customer identification and verification process but for which the process is not completed before the account is opened (*i.e.,* when the consumer must take an affirmative step to register the account after acquisition). Specifically, paragraph (c) is revised to reflect that, under the final rule, failure to register an account with the financial institution will not jeopardize a consumer's right to have an error investigated and resolved. Rather, as revised, final paragraph (c) explains that a consumer may not receive provisional credit while an error claim is pending on a prepaid account that has not been registered.

The Bureau is otherwise adopting appendix A–7 as proposed.

Appendix A–10 Model Forms and Sample Forms for Financial Institutions Offering Prepaid Accounts (§§ 1005.15(c)) and 1005.18(b))

The Bureau proposed 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 have 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 have 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 have set forth the short 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 have 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 have 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 have 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 have 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*).

The Bureau did not receive any comments regarding the proposed model and sample forms with respect to appendix A–10 specifically. The Bureau received many comments regarding its proposed pre-acquisition disclosure regime in general as well as regarding its

[556] The Bureau tested a version of this proposed model language with consumers. *See* ICF Report I at 23.

specific proposed requirements for the short form and long form disclosures. For a general discussion of the pre-acquisition disclosure regime and the content and format of the short form and long form disclosures the Bureau is adopting in this final rule, see the section-by-section analysis of § 1005.18(b) above. For discussion of the specific requirements in the final rule for the short form and long form disclosures, see the section-by-section analyses above under § 1005.18(b) for each of the specific elements of the disclosures.

The Bureau is finalizing appendix A–10 generally as proposed, with revisions to reflect changes made to the regulatory text of the short form and long form disclosure requirements in final § 1005.(c) and § 1005.18(b). In addition, the Bureau has revised the order of the model and sample forms in the final rule to include all short form disclosures together as Model Forms A–10(a) through (e) and the long form disclosure as Sample Form A–10(f). The Bureau has also removed the proposed sample long form disclosure for prepaid accounts that offer multiple service plans to provide greater flexibility to industry to develop its own designs. Moreover, the Bureau believes that Sample Form A–10(f) provides a sufficient template from which to design a long form for multiple service plans.

Thus, the Bureau is finalizing Model Forms A–10(a) through (e) and Sample Forms A–10(f) in appendix A in relation to the disclosure requirements set forth in the final rule in final § 1005.15(c) and § 1005.18(b). Model Form A–10(a) sets forth the short form disclosure for government benefit account programs as described in final § 1005.15(c). Model Form A–10(b) sets forth the short form disclosure for payroll card account programs as described in final § 1005.18(b), including the additional content specific to payroll card accounts set forth in final § 1005.18(b)(2)(xiv). Model Form A–10(c) sets forth a general short form disclosure for prepaid account programs for which overdraft/credit features may be offered as described in final § 1005.18(b)(2)(x) and that are eligible for FDIC deposit insurance as described in final § 1005.18(b)(2)(xi). Model Form A–10(d) sets forth an alternate version of a general short form disclosure for prepaid account programs that do not offer an overdraft/credit feature as described in final § 1005.18(b)(2)(x) and that are not eligible for FDIC deposit insurance as described in final § 1005.18(b)(2)(xi). Model Form A–10(e) sets forth the short form disclosure for prepaid account programs that offer multiple service plans and choose to disclose those multiple service plans on one short form disclosure pursuant to final § 1005.18(b)(6)(iii)(B)(*2*). Sample Form A–10(f) sets forth the long form disclosure for prepaid account programs as described in final § 1005.18(b)(4).

Appendix A—Model Disclosure Clauses and Forms

The Bureau is updating comment –2 in the commentary to appendix A (Appendix A—Model Disclosure Clauses and Forms). Pursuant to existing comment –2, financial institutions and remittance transfer providers have the option of using the model disclosure clauses provided in appendix A to facilitate compliance with the disclosure requirements enumerated in the comment. The comment also explains how the use of the appropriate clauses provided in appendix A will protect a financial institution and a remittance transfer provider from liability under sections 916 and 917 of EFTA, provided the clauses accurately reflect the institution's EFT services and the provider's remittance transfer services, respectively. In this final rule, the Bureau is updating the enumerated disclosure requirements in comment –2 to reflect changes to the numbering of § 1005.15 and § 1005.18 in the final rule and to add the provisions for new disclosure requirements included in the final rule.

The Bureau also is updating existing comment –3 in the commentary to appendix A (Appendix A—Model Disclosure Clauses and Forms). Pursuant to comment –3, financial institutions may use clauses of their own design in conjunction with the Bureau's model clauses in appendix A. The Bureau is adding a sentence to comment –3 to clarify that the alterations set forth in the comment apply, unless otherwise expressly addressed in the rule. The Bureau is adding this sentence to clarify the alterations permitted under existing comment –3 may not apply to certain disclosures pursuant to this final rule. For example, alternations permitting deletion of inapplicable services does not apply to the short form disclosures required by § 1005.18(b)(2). *See* comment 18(b)(2)–1.

Subpart B—Requirements for Remittance Transfers

On February 7, 2012, the Bureau published a final rule implementing section 1073 of the Dodd-Frank Act, which 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.[557] 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. The final rule implemented these provisions in new subpart B of Regulation E.

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, regardless of whether the sender holds an account with the provider, and regardless of whether the transaction is also an EFT, as defined in § 1005.3(b).[558] A designated recipient is any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country.[559] A sender is a consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient.[560]

In order to assess whether a consumer is a sender or whether an authorized recipient is a designated recipient, the location of where the funds are sent from and the location of where the funds are sent to are determinative. If the transfer is sent from an account (*e.g.,* a consumer transfers $100 out of the consumer's checking account) or to an account (*e.g.,* a consumer sends $100 in cash to a family's member's bank account in a foreign country), the location of the account determines where the funds are being, as applicable, sent from or sent to. To illustrate, existing comment 30(c)–2.ii explains that if a recipient's account is located in a State, the funds will not be received at a location in a foreign country.[561]

With respect to products such as prepaid cards (other than prepaid cards that were already accounts under Regulation E) and digital wallets;

[557] 77 FR 6194 (Feb. 7, 2012). This 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).

[558] § 1005.30(e).

[559] § 1005.30(c).

[560] § 1005.30(g).

[561] An account located on a U.S. military installation that is physically located in a foreign country is located in a State. *See* comments 30(c)–2.ii and 30(g)–1.

however, the Remittance Rule does not treat those products as accounts.[562] Because these products were not previously considered to be accounts as defined in § 1005.2(b) of current Regulation E, the Remittance Rule directs that one must look at where the funds are being sent from to determine if a consumer is a sender and where the funds are being sent to in order to determine if the person receiving the funds is a designated recipient. In other words, the location of the consumer sending the funds determines where the funds are being sent from, and the location of the person receiving the funds determines where the funds are received. To illustrate, existing comment 30(c)–2.iii explains that if a consumer in a State purchases a prepaid card, the remittance transfer provider has sufficient information to conclude that funds are to be received in a foreign country if the provider sends the prepaid card to a specified recipient in a foreign country.

As the Bureau noted in the proposal, the definition of prepaid account would mean that certain prepaid products such as GPR cards and certain digital wallets would be considered accounts under Regulation E. Yet, the Bureau also noted that it did not intend to change how the Remittance Rule applied to prepaid products. Accordingly, the Bureau sought comments on whether additional clarification or guidance is necessary with respect to the Remittance Rule. Although the Bureau did not receive comments on this aspect of the proposal, the Bureau believes that to facilitate compliance, it is necessary to clarify that for prepaid accounts other than payroll card accounts and government benefit accounts, the location of these accounts does not determine where funds are being sent to or from. Accordingly, this final rule contains clarifying and conforming revisions to comments 30(c)–2.ii and 30(g)–1 to clarify that transfers involving a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account) are not transfers from an account or to an account. For the same reason, this final rule also amends § 1005.32(a), as discussed in greater detail below.

[562] 77 FR 6194, 6207 (explaining that where the funds that can be accessed by a prepaid card are held does not determine whether funds are being sent to a designated recipient because a prepaid card is generally not considered to be an account as defined in § 1005.2(b)).

Section 1005.30 Remittance Transfer Definitions

As amended, comment 30(c)–2.ii explains that for transfers to a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), where the funds are to be received in a location physically outside of any State depends on whether the provider at the time the transfer is requested has information indicating that funds are to be received in a foreign country. In addition, for transfers to all other accounts, whether funds are to be received at a location physically outside of any State depends on where the account is located. If the account is located in a State, the funds will not be received at a location in a foreign country. Further, for these accounts, if they are located on a U.S. military installation that is physically located in a foreign country, then they are located in a State.

Further, comment 30(g)–1, as amended, explains that for transfers sent from a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), whether the consumer is located in a State depends on the location of the consumer. If the provider does not know where the consumer is at the time the consumer requests the transfer from the consumer's prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer. For transfers from all other accounts belonging to a consumer, whether a consumer is located in a State depends on where the consumer's account is located. Additionally, for these accounts, if they are located on a U.S. military installation that is physically located in a foreign country, then they are located in a State.

The Bureau additionally proposed making conforming changes to existing comment 30(g)–3. Comment 30(g)–3 references the regulatory citation for *bona fide* trust account in § 1005.2(b)(3). The Bureau proposed renumbering the regulatory citation for *bona fide* trust account, changing it from § 1005.2(b)(3) to § 1005.2(b)(2), because the Bureau proposed to set forth the definition of prepaid account in new § 1005.2(b)(3). The Bureau also proposed minor changes to comment 30(g)–3 to streamline the text of the comment without altering its meaning. The Bureau did not receive any comments on these proposed changes, and the Bureau is adopting comment 30(g)–3 as proposed.

Section 1005.32 Estimates

32(a) Temporary Exception for Insured Institutions

The Remittance Rule generally requires that a remittance transfer provider must disclose to a sender the actual exchange rate, fees, and taxes that will apply to a remittance transfer, and the actual amount that the designated recipient of the remittance transfer will receive. However, subpart B sets forth four exceptions to this general rule. These exceptions permit providers to disclose estimates instead of actual amounts. EFTA section 919 provides two such exceptions. The exception at issue in § 1005.32(a) is a temporary exception for insured institutions with respect to remittance transfers a sender sends from the sender's account with the institution, as long as the provider cannot determined the exact amounts for reasons beyond its control. When the Bureau made the determination to extend the temporary exception to July 20, 2020, the Bureau's determination was limited to accounts under existing Regulation E. In other words, GPR cards and digital wallets that will become accounts under this final rule were not included in the scope of the temporary exemption. Accordingly, the Bureau is amending § 1005.32(a) to set forth that for purposes of § 1005.32(a), a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account. This amendment is intended to continue the current application of the Remittance Rule to prepaid products.

The Bureau adopts these clarifying and conforming amendments in subpart B pursuant to its authority under EFTA sections 904(a). EFTA section 904(a) authorizes the Bureau to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA, as amended by the Dodd-Frank Act, are to establish the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems and to provide individual consumer rights.[563]

Regulation Z

Overview of the Bureau's Proposed Approach to Regulation Z

In developing the proposal, the Bureau considered whether and how to

[563] EFTA section 902(b).

regulate credit features offered in connection with prepaid accounts. Specifically, the Bureau considered potential transactions where consumers are allowed to overdraw their prepaid accounts through a fee-based overdraft service, to draw credit from a separate overdraft line of credit using a prepaid card,[564] or to push credit funds into a specified prepaid account to cover transactions for which there are insufficient or unavailable funds. As explained in more detail below, the Bureau proposed generally to treat all three product structures as ''credit cards'' that access ''open-end (not home-secured) credit plans'' under Regulation Z, and thus to subject them to the credit card protections set forth in Regulation Z. In addition and as explained above, the Bureau also proposed to revise existing 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.

The proposal would have provided guidance on when the following devices related to prepaid accounts would be ''credit cards'': (1) Prepaid cards; and (2) account numbers that are not prepaid cards 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. With respect to credit features accessed by prepaid cards, the proposal would have covered a broad range of credit plans as credit card accounts under Regulation Z when they were accessed by prepaid cards. Under the proposal, this would have applied 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. In the proposal, the Bureau intended broadly to capture a prepaid card as a credit card when it directly accessed a credit plan, regardless of whether that credit plan was structured as a separate credit plan or as a negative balance to the prepaid account.

In addition, the proposal also would have included certain account numbers that are not prepaid cards as ''credit cards'' under Regulation Z when the account number could access a credit plan that only allows deposits directly into particular prepaid accounts specified by the creditor. This proposal language would have covered credit plans that are not accessed directly by prepaid cards but are structured as ''push'' accounts. The Bureau proposed to cover these account numbers for push accounts as credit cards because of concerns that these types of credit plans could act as substitutes for credit plans directly accessed by prepaid cards. In this case, a third-party creditor could have an arrangement with the prepaid account issuer such that credit from the credit account is pushed from the credit account to the prepaid account during the course of a particular prepaid account transaction to prevent the transaction from taking the prepaid account balance negative. These provisions related to account numbers for the credit account were designed to prevent this type of evasion of the rules applicable to prepaid cards that are credit cards.

In proposing to subject all three product structures to the rules for credit cards, the Bureau recognized that it would be consciously departing from existing regulatory structures that apply in the checking account context, where overdraft services structured as a negative balance on a checking account generally are governed by a limited opt-in regime under Regulation E and other forms of credit are subject to more holistic regulation under Regulation Z. As discussed further below, the final rule maintains the major thrust of the proposal by generally treating prepaid cards that access overdraft credit features as credit cards subject to Regulation Z. The final rule thus extends the credit card rules to credit features that can be accessed in the course of a transaction conducted with a prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers regardless of whether access is structured through a ''pull'' or ''push'' arrangement. However, the final rule excludes situations in which prepaid account issuers are only providing certain incidental forms of credit without charging credit-related fees (such as in so-called ''force pay'' transactions) as well as situations in which a consumer chooses to link a prepaid card to a credit feature offered by a third party that has no business relationship with the prepaid account issuer. The final rule also excludes situations where the prepaid card only can access a credit feature outside the course of a transaction conducted with a prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau has also revised various elements of the proposed rule and provided additional clarity regarding operational practices to promote transparency and facilitate compliance for credit features offered in connection with prepaid accounts that are subject to the credit card rules under Regulation Z.

Comments Received

The majority of the comments received by the Bureau in response to this rulemaking concerned the Bureau's proposed approach to regulating credit features offered in connection with prepaid accounts. In general, most consumer groups urged the Bureau to ban overdraft services in connection with prepaid products, arguing that the overdraft fees and accumulating debt can be harmful (many individual consumers also commented in support of additional protections for overdraft services on prepaid cards, as discussed below). They argued that prepaid consumers are often more vulnerable than users of traditional deposit accounts or do not anticipate having to deal with credit on their prepaid accounts. They argued further that prepaid accounts should remain true to their name—prepaid—and similarly that prepaid consumers who wish to use credit should do so deliberately, and not inadvertently through overdraft transactions. In addition, consumer groups advocating a ban also argued that the financial incentives of an overdraft business model would become increasingly hard to resist for the issuers of prepaid accounts, most of whom do not currently offer overdraft services, and that the Bureau should remove these incentives through a regulatory prohibition on prepaid overdrafts.

For similar reasons, several consumer groups also advocated for a specific ban on overdraft features in connection with government benefit accounts and payroll card accounts, and one consumer group further advocated for a ban on overdraft features offered in connection with student cards. Several consumer groups argued that, if the Bureau did not adopt a ban on prepaid overdraft, any credit offered in connection with a prepaid account should be regulated as a credit card under Regulation Z and should be required to be offered separately from the prepaid account.

In contrast, most industry commenters (as well as some individual consumer commenters, as discussed below) generally objected to the Bureau adopting regulations that would limit

[564] This final rule's Regulation Z provisions reference credit features accessed through a prepaid *card*. The final rule's Regulation E provisions, by contrast, largely refer to prepaid *accounts*, and, separately, to access devices for prepaid accounts.

credit features on prepaid accounts.[565] In particular, these commenters stated that overdraft for prepaid accounts should function as it does for other types of deposit accounts with linked debit cards—*i.e.,* subject to the current Regulation E opt-in framework for overdraft. Several members of Congress likewise argued that prepaid overdraft should be regulated under the Regulation E opt-in approach. These industry and government commenters argued that to the extent the Bureau seeks to treat prepaid accounts as transaction account substitutes, such products should be subject to the same regulatory requirements (and exceptions) as those accounts, including opt-in requirements for overdraft services.

Some industry commenters that objected to the Bureau's Regulation Z approach, including trade associations, a credit union, and a program manager that offers overdraft on certain of its prepaid accounts, disputed the Bureau's proposed interpretation of the relevant Regulation Z provisions and expressed concern that the Bureau's proposed interpretation of certain credit-related definitions in Regulation Z would have broader implications for traditional overdraft services on checking accounts.

Several industry commenters argued that, if the Bureau finds that the current Regulation E opt-in approach is insufficient to regulate prepaid overdraft, the Bureau should consider other alternatives that would be preferable—and simpler—than a regime that subjects prepaid overdraft to credit card rules under Regulation Z. For example, several commenters, including a trade association and a credit union issuer, suggested that the Bureau consider a cap on overdraft fees, while others suggested that the Bureau impose a cap on the amount that any account may be overdrawn. Other commenters, including several members of Congress, urged the Bureau to put in place a set of requirements to limit overdraft credit features offered in connection with prepaid accounts, which would essentially mirror the structure of a program offered today by one industry participant. That program includes a maximum overdraft amount, limitations on the number of monthly overdrafts per account, and a cooling-off period for frequent overdrafters. A law firm writing on behalf of a coalition of prepaid issuers advocated for a similar structure, including a limit on the amount of an overdraft fee so it cannot exceed the dollar amount of the overdraft or prohibiting overdraft fees on transactions below a certain dollar threshold, together with an overdraft fee cap. An industry trade association likewise suggested that the Bureau adopt caps on overdraft amounts and fees, and also suggested that these be augmented by a limit on the number of times an overdraft fee could be charged in a given period, as well as requirements to provide detailed disclosures informing the consumer how the overdraft features work. Several industry commenters, including one credit union service organization, suggested that the Bureau adopt a dollar limit below which overdrafts occurring in connection with a prepaid account would be excluded from the definition of credit under Regulation Z and instead covered by the Regulation E opt-in regime.

Some industry commenters argued that their customers want—or even need—access to short-term credit in connection with their GPR cards. Several trade association commenters similarly stated that consumers want access to credit features on prepaid cards. These commenters expressed concern that subjecting overdraft credit on prepaid accounts to Regulation Z credit card rules would cut off consumers' access to short-term credit. The Bureau also received comments from several members of Congress stating that their constituents use and depend upon credit features attached to prepaid cards.

As noted above, the Bureau received around 6,000 comments from consumers who use prepaid products currently offering overdraft services. The Bureau understands that these letters were coordinated as part of a letter-writing campaign organized by a program manager that offers overdraft on certain of its prepaid accounts. These consumers voiced support for their overdraft services. Some noted, for example, that the overdraft fees charged on their prepaid accounts were less than the overdraft fees charged by banks, and that their overdraft services allowed them to bridge cash shortfalls between paychecks and fulfill other short-term credit needs. By contrast, the Bureau also received comments from consumers opposed to prepaid overdraft features. As part of a letter-writing campaign organized by a consumer group, the Bureau received largely identical comments from approximately 56,000 consumers generally in support of the proposal—particularly related to the requirement under Regulation Z credit card rules to assess consumers' ability to pay before offering credit attached to prepaid cards—and urging the Bureau to finalize strong credit provisions in the final rule so that consumers can avoid hidden fees and unexpected debt.

In addition to these comments about the Bureau's general approach to regulating credit offered in connection with prepaid accounts, the Bureau also received numerous comment letters from industry and consumer groups on the specifics of this part of the proposal. Most industry commenters were concerned that the proposed regime would sweep in far more products than the Bureau intended by covering situations where credit is extended to cover so-called ''force pay'' transactions. Force pay transactions occur where the prepaid account issuer is required by card network rules to pay a transaction even though there are insufficient or unavailable funds in the prepaid account to cover the transaction at settlement. Industry commenters were nearly universally concerned that force pay transactions would trigger coverage under the proposal even when the only fee charged in connection with the overdrawn transaction is a fee, such as a per transaction fee, that would be charged regardless of whether the transaction is paid from a positive balance on the prepaid account or overdraws the account. Industry commenters said requiring prepaid account issuers to waive neutral per transaction fees in order to avoid triggering the credit card rules on force pay transactions would be more complicated than the Bureau anticipated in the proposal and would impose substantial compliance costs. These commenters indicated that similar issues may also arise with other transaction-specific fees, such as currency conversion fees assessed on force pay transactions.

The Bureau also received industry comments that a prepaid card should not be a credit card with respect to a separate credit feature when the credit feature is being offered by an unrelated third party. These commenters were concerned that unrelated third-party creditors may not be aware that their credit features are being used as overdraft credit features with respect to prepaid accounts. If unrelated third-party creditors were subject to the proposal, commenters said these creditors would face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account. This would have been true even if the creditors were already subject to the

[565] One industry commenter, an issuing bank, urged the Bureau to ban overdraft features on prepaid accounts, though unlike the consumer group commenters who took the same position, this commenter argued that, absent a ban, the Bureau should regulate prepaid overdraft under Regulation E.

credit card rules in their own right because the proposal contained a number of provisions that would have applied only to prepaid cards that are credit cards and would not have applied to credit card accounts generally. On the other hand, several consumer groups supported the proposal to consider a third party that offers an open-end credit feature accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z.

One industry commenter expressed concern that the proposal would trigger the credit card rules in situations in which a prepaid card could be used only to complete standalone loads or transfers of credit from a separate credit feature to the prepaid account, but not to access credit in the course of a transaction conducted with the prepaid card. This commenter noted that there are several circumstances in which consumers can consciously load value to their prepaid accounts using a debit card or credit card, where this load is not occurring as part of an overdraft feature in connection with the prepaid account. Specifically, in this scenario, the consumer does not access credit automatically in the course of a transaction conducted with the prepaid card, but rather uses the credit or debit card to make a one-time load outside the course of any particular transaction. This commenter urged the Bureau to clarify that such loads do not make the prepaid card into a credit card under Regulation Z.

On the other hand, several consumer group commenters suggested that the Bureau should apply the credit card rules to any credit plan from which credit is transferred to prepaid cards, rather than limiting application only to certain ''push'' arrangements as proposed (where a prepaid account is the only account designated by the creditor as a destination for the credit provided). Similarly, another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit may be deposited or transferred to prepaid card accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

Overview of the Final Rule's Amendments to Regulation Z

In the final rule, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner and credit can be accessed in the course of a transaction conducted with the prepaid card (except for very limited incidental credit, as described below). The reasons for this are explained further below, but to facilitate understanding, this subsection first gives an overview of the coverage decisions and structure of the final rule. As the Bureau noted in the proposal and as discussed below, the provisions addressing credit features in connection with a prepaid account in the final rule are not intended to alter treatment of overdraft services or products on checking accounts under Regulation Z.

The final rule sets forth the rules for when a prepaid card is a credit card under Regulation Z in new § 1026.61. The Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. While Regulation E provides protections for the asset account of a prepaid account, the Bureau believes separate protections are necessary under Regulation Z for certain overdraft credit features in connection with prepaid accounts.

New § 1026.61(b) generally requires that such credit features be structured as separate sub-accounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to such separate credit features if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a ''covered separate credit feature.'' Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

To effectuate these provisions and provide compliance guidance to industry, the Bureau is also revising certain other credit card provisions as a result of new § 1026.61. For example, the final rule provides guidance in new § 1026.4(b)(11) and related commentary on how the definition of finance charge applies to covered separate credit features accessible by hybrid prepaid-credit cards. In addition, the Bureau notes that, pursuant to the final rule, accounts that are ''hybrid prepaid-credit cards'' will be subject to the credit card protections in Regulation Z, as well as all other applicable provisions of Regulation Z. This includes, for example, Regulation Z's requirement that creditors retain evidence of compliance with Regulation Z.[566]

As discussed in the section-by-section analysis of § 1026.61 below, the final rule provides certain exclusions from coverage for prepaid cards that access credit in certain situations. Specifically, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a credit card with respect to a credit feature that does not meet both conditions stated above, namely that the credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party (*i.e.,* that is not the prepaid account issuer, its affiliate, or its business partner). Such credit features are defined as ''non-covered separate credit features.'' Under the final rule, a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z in its own right, depending on the terms and conditions of the product.

In addition, under new § 1026.61(a)(4) a prepaid card also is not a credit card when the prepaid card only accesses credit that is incidental to certain transactions in the form of a negative balance on the asset account where the prepaid account issuer does not charge credit-related fees for the credit. This exception is intended to exempt three types of credit so long as the prepaid account issuer generally does not charge credit-related fees for the credit: (1) Credit related to ''force pay'' transactions; (2) a de minimis $10 payment cushion; and (3) a delayed load

[566] *See* § 1026.25.

cushion where credit is extended while a load of funds from an asset account is pending. Under the final rule, this type of credit generally is subject to Regulation E, instead of Regulation Z.[567] For example, as discussed in more detail in the section-by-section analysis of Regulation E § 1005.12(a) above, Regulation E's provisions in final §§ 1005.11 and 1005.18(e) regarding error resolution would apply to extensions of this credit. Also, as discussed in more detail in the section-by-section analysis of Regulation E § 1005.17 above, although this incidental credit generally is governed by Regulation E, the Bureau is exempting this incidental credit from the opt-in rule in final § 1005.17. For the reasons discussed in more detail in the section-by-section analysis of Regulation E § 1005.17 above, the Bureau is adding new § 1005.17(a)(4) to provide that credit accessed from an overdraft credit feature that is exempt from Regulation Z under § 1026.61(a)(4) is not an overdraft service under final § 1005.17(a) and thus would not be subject to the opt-in requirements in final § 1005.17.

The Bureau notes that the final rule does not adopt proposed provisions that would have made certain credit account numbers that were used to push credit onto a prepaid card into credit cards as described above. Instead, the Bureau in the final rule addresses the evasion concerns discussed in the proposal and raised by consumer group commenters through the definition of ''hybrid prepaid-credit card'' as discussed below. The Bureau will continue to monitor the market for potential evasion of the provisions addressing hybrid prepaid-credit cards, and will consider further modifications in future rulemakings if necessary.

Consideration of extension of existing exemptions for prepaid overdraft services. The Bureau has carefully considered the comments submitted by all interested stakeholders addressing the regulatory framework and implementation of the rule under a Regulation Z approach, and has decided to finalize its proposal to depart from the regulatory framework that applies to overdraft services on checking accounts, which was created by the Board through previous rulemakings. As discussed further separately below, the Bureau believes that the credit card rules under Regulation Z provide a more appropriate and protective regulatory framework for overdraft features on prepaid accounts.

The Board, acting in the late 1960s, decided to subject overdraft lines of credit in connection with traditional deposit accounts to Regulation Z requirements for open-end credit, while carving ad hoc ''courtesy'' 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.[568] 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.''[569] 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.[570] Rather, overdraft services are not subject to Regulation Z credit protections. While the Board later issued rules under Regulation E to specify disclosure requirements and to require an opt-in process for certain types of overdraft transactions, these rules generally provide fewer protections for consumers on an ongoing basis than does Regulation Z.

The Bureau believes that this existing patchwork approach should not be extended to prepaid accounts, both because the historical justification for the regulatory treatment of checking account overdraft services under Regulation Z does not apply to prepaid accounts and because there are notable differences between how prepaid accounts and checking accounts function. 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 which could trigger an NSF fee, additional fees imposed by merchants, and even potential criminal liability for passing bad checks.[571] With relatively low fees and low incidence, the programs were therefore considered a minor ''courtesy'' service that enabled consumers to avoid both the embarrassment of bouncing checks and the attendant costs.

[567] With respect to such credit, the final rule provides that a prepaid account issuer is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.17(a)(iii) or (iv) because it is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.2(a)(17)(i) as a result of imposing fees on the prepaid account because those fees are not finance charges as described in new comment 4(b)(11)–1.iii.

[568] *See* § 1026.2(a)(17)(i). 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)(A), 1026.7(b)(11), 1026.12 and 1026.51 through 1026.60.

[569] *See* § 1026.4(c)(3).

[570] In addition, the commentary to the definition of ''credit card'' explains that a debit card is not a credit card where there is no credit feature or agreement to extend credit, even if the creditor occasionally honors an inadvertent overdraft. *See* comment 2(a)(15)–2.ii.A. The Board adopted this commentary to exclude overdraft services 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. *See* 75 FR 7657, 7664 (Feb. 22, 2010).

[571] 77 FR 59033, 59033 (Nov. 17, 2009); *see also generally* Fed. Deposit Ins. Corp., FIL–81–2010, *Overdraft Payment Programs and Consumer Protection Final Overdraft Payment Supervisory Guidance* (Fin. Inst. Letter, Nov. 24, 2010), *available at https://www.fdic.gov/news/news/financial/2010/fil10081.html.*

However, the account structure and logistics for prepaid accounts have never matched those for checking accounts that existed in 1969. Checking accounts generally 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 for two reasons. First, the exact timing of the check clearance and incoming ACH process can be difficult for the consumer to predict. For instance, it may sometimes 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 may lead to inadvertent overdrafts. Second, where this occurs, there is a benefit to the consumer in paying the transaction rather than declining the transaction and exposing the consumer not only to NSF fees but to bounced check fees and late payment fees charged by the payee.

By contrast, the vast majority of prepaid account transactions are preauthorized, which means that the merchant seeks authorization from the financial institution before providing goods or services to the consumer.[572] 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.[573] 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-authorized 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.

There are several additional reasons why the Bureau believes the existing treatment of checking account overdraft would be inappropriate as applied to prepaid accounts. As stated in the proposal, a substantial portion of consumers holding prepaid accounts have had difficult experiences with overdraft services on traditional checking accounts.[574] In general, prepaid consumers are disproportionately unbanked or underbanked.[575] Some studies have also shown they are more likely to have limited education, and are often unemployed or recipients of public benefits.[576] 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.

Moreover, as noted in the proposal, 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.[577] Relatedly, the Bureau also believes that many of these consumers, and even many consumers who continue to maintain separate checking accounts, choose to purchase prepaid products because of their promise to allow consumers to control their spending. Indeed, many participants in the Bureau's pre-proposal consumer testing emphasized control as a primary reason they used prepaid cards.[578] 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.[579]

The Bureau believes the final rule's approach with respect to overdraft credit features on prepaid accounts will help preserve the unique character of prepaid accounts as a safe alternative to products that offer credit features, in conformance with the expectations of most prepaid consumers. This treatment is in contrast to the historical evolution of checking accounts, where overdraft services have been common across almost all such accounts and consumers often expect such services to be offered in connection with checking accounts.

Further, unlike with respect to checking accounts where overdraft services have been structured to fit a unique and separate regulatory regime

[572] An exception is third-party ACH debits, which could be submitted without prior authorization from the financial institution. 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.

[573] 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).

[574] 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 major issuer estimated 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), *available at 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.''). Similarly, others have informed Bureau staff that the average credit score of prepaid account users is far below average.

[575] 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* 2012 FRB Kansas City Study at 11–12 (although the report also notes no correlation due to income or education; possibly due to the different types of use by prepaid consumers).

[576] 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/_on_prepaid_cards_(3).pdf.*

[577] *See, e.g.,* Network Branded Prepaid Card Ass'n, *Prepaid Card Benefits, http://www.nbpca.com/en/What-Are-Prepaid-Cards/Prepaid-Card-Benefits.aspx* (last visited Oct. 1, 2016) (''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, C.E.O., NetSpend Holdings, Inc.) (''Our customers are typically working Americans who want control . . . '').

[578] *See* ICF Report I at 5.

[579] *See* Bretton Woods, Inc., *A Comparative Cost Analysis of Prepaid Cards, Basic Checking Accounts and Check Cashing,* at 4 (Feb. 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)).

for several decades, the Bureau is regulating prepaid overdraft services on a largely blank slate. Checking accounts and their pricing structures have evolved over the last several decades under compliance frameworks that were developed in accordance with existing regulations, exceptions to those regulations, and other agencies' guidance. In contrast, very few prepaid products currently offer overdraft services or other associated credit features. Most prepaid account programs do not have such a feature and, as a result, prepaid issuers would have to implement a new compliance regime in any event were they to decide to add such features.

Similarly, the Bureau is concerned that if it were to extend the exception for overdraft services in connection with checking accounts to prepaid accounts, financial institutions offering overdraft on prepaid accounts would come to rely heavily on back-end pricing like overdraft fees, while eliminating or reducing front-end pricing, as has occurred with overdraft services on checking accounts. Indeed, although there are few prepaid providers currently offering overdraft services, one commenter provided data that suggests that the fee revenue attributable to overdraft fees for those prepaid providers who do offer overdraft have come to make up a significant portion of their revenue.[580]

The Bureau believes such pricing structures can result in less transparent pricing for consumers. By labeling overdraft credit features 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 some prepaid accountholders decide they want to access such credit.

Because it has elected to treat overdraft credit features offered on prepaid accounts as credit cards under Regulation Z, the Bureau declines to adopt additional restrictions or requirements in Regulation E for prepaid accounts offering overdraft credit, as some industry commenters suggested. As summarized above, some industry commenters suggested that, to the extent the Bureau was concerned that Regulation E's opt-in regime was not sufficiently robust to address the perceived consumer harms associated with prepaid overdraft, the Bureau could impose additional, prepaid-specific restrictions within Regulation E to, for example, limit the amount of prepaid overdraft fees, limit the amount by which a prepaid account could be overdrawn, or limit the number of times a prepaid account could be overdrawn during a given period. The Bureau declines to adopt this approach. For the reasons discussed below, the Bureau believes that the credit card rules provide a comprehensive existing framework that provides substantial benefits to consumers, and that it is more appropriate under these circumstances to adopt that framework than to create additional novel requirements in Regulation E.

With respect to the comment that the Bureau should adopt a dollar limit below which overdrafts occurring in connection with a prepaid account would be excluded from the definition of credit under Regulation Z and instead be covered by the Regulation E opt-in regime, the Bureau is concerned that allowing consumers to incur substantial debt in connection with an account that most do not intend to use as a credit account may pose a risk to those consumers by compromising their ability to manage and control their finances.[581] Thus, while the final rule would permit a financial institution to offer an incidental ''payment cushion'' of $10 without triggering the rules governing credit cards under Regulation Z so long as the issuer does not impose credit-related fees, the Bureau believes that the provision of a higher dollar amount of credit in connection with a prepaid account should be subject to full credit card protections unless otherwise excluded under the final rule.

Treatment of prepaid overdraft services under the credit card rules in Regulation Z. The Bureau has concluded that the open-end credit regime established under Regulation Z is an appropriate and fitting regime for the treatment of overdraft credit features offered in connection with prepaid accounts. The term ''open-end credit'' is defined 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. As explained in the proposal, the Bureau has analyzed whether it is reasonable to interpret ''credit'' to include when overdrafts are paid in relation to prepaid accounts. The Bureau continues to believe it is. The Bureau also believes that overdraft services, overdraft lines of credit, and similar products that could be offered in connection with prepaid accounts can be regulated by Regulation Z as a ''plan'' where the consumer is contractually obligated to repay the debt, even if the creditor retains, by contract, the discretion not to extend credit.

The Bureau has further evaluated whether such a plan satisfies the three prongs necessary to establish the plan as an open-end (not home-secured) credit plan under Regulation Z. 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. Every prepaid overdraft service that charges a fee of which the Bureau is aware contemplates and approves repeated transactions. The second prong of the definition asks whether the creditor may impose a finance charge from time to time on an outstanding unpaid balance.[582] The Bureau believes that overdraft fees and other charges on credit features offered in conjunction with prepaid accounts easily meet the general definition of finance charge. 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 constitute finance charges, because they are directly payable by the consumer and imposed directly by the creditor as a condition of the extension of credit. Lastly, the Bureau believes 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. 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.

The Bureau also believes that covering overdraft services offered in connection with prepaid accounts under

[580] According to the office of a State Attorney General, overdraft fees and declined balance fees may comprise a substantial portion of the fee-based revenue for financial institutions offering payroll card programs, stating that, in its survey of 38 employers' payroll card programs, overdraft fees comprised over 40 percent of the fees assessed by those vendors that charge them.

[581] See also the section-by-section analyses of §§ 1026.2(a)(14) and 1026.61(a)(4) below.

[582] *See* § 1026.2(a)(20)(ii).

Regulation Z aligns with TILA's purpose 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.[583] The Bureau believes that regulation of prepaid account overdraft services as open-end (not home-secured) credit will 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.

Finally, the Bureau believes that Regulation Z's credit card provisions, particularly as augmented by some tailored provisions that the Bureau is adopting specifically for the prepaid context, provide substantially more consumer protections than other existing regulatory regimes. These include greater protections around pricing, protections around creditors taking payments from consumers' accounts, and regulations to govern the process by which consumers make an initial decision to select a credit feature. For example, regulations implementing the Credit CARD Act impose a number of restrictions concerning credit pricing. These include restrictions on the fees that an issuer can charge during the first year after an account is opened, and limits on the instances in which and the amount of such fees that issuers can charge as penalty fees when a consumer makes a late payment or exceeds his or her credit limit. The Credit CARD Act also restricts the circumstances under which issuers can increase interest rates on credit cards and establishes procedures for doing so. The Bureau believes that applying the Credit CARD Act provisions to overdraft features in connection with prepaid accounts would promote transparent pricing for prepaid accountholders.

In addition, application of the Fair Credit Billing Act and Credit CARD Act requirements, including the FCBA's no-offset provision,[584] along with application of the compulsory use provision in Regulation E § 1005.10(e)(1) to overdraft credit features offered in connection with prepaid accounts, will 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.[585] The application of these provisions would mean that with respect to overdraft credit features subject to this final rule, card issuers (1) would be required to adopt reasonable procedures designed to ensure that periodic statements for the credit feature 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 covered separate credit feature 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 on the covered separate credit feature 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). Card issuers also would be prohibited from extending credit without assessing the consumer's ability to pay, and must comply with special rules regarding the extension of credit to persons under the age of 21.

Furthermore, by not permitting financial institutions to accept applications for an overdraft credit feature until 30 days after registration of the prepaid account,[586] the Bureau believes the final rule will prevent consumers from being pressured to make a decision on overdraft credit when acquiring the prepaid account, such as when they purchase a GPR card at a retail location with an incentive to encourage consumers to sign up for overdraft, and protect them from incurring credit-related fees in the period during which they are getting accustomed to the features and uses of their account. It will also allow consumers time to decide whether the basic prepaid account is a good fit for them before deciding whether to layer on a separate credit feature that may be more difficult to walk away from.

The Bureau takes seriously concerns that the proposed approach could have had unintended consequences for all prepaid issuers in circumstances where they do not intend to extend credit as well as for credit that prepaid consumers receive through other channels. Specifically, to address commenters' concerns about coverage as a result of a prepaid issuer paying force pay transactions, the final rule clarifies that a prepaid card is not a credit card when the prepaid card accesses credit that is incidental to certain transactions in the form of a negative balance on the asset account where the prepaid account issuer generally is not charging credit-related fees for the credit. In addition, the Bureau is sensitive to concerns that, by subjecting credit offered in connection with prepaid cards to Regulation Z's credit card regime, this rulemaking may reduce access to some forms of credit. For that reason, under the final rule, a separate credit feature will not be covered if it is offered by an unrelated third party that is not the prepaid account issuer, its affiliates, or its business partners. This is true even if the separate credit feature is providing funds to the prepaid account to cover transactions for which there would not otherwise be sufficient funds. In addition, a separate credit feature is not covered under the final rule if it cannot access the separate credit feature during the course of authorizing, settling, or otherwise completing transactions even if the credit feature is offered by the prepaid account issuer, its affiliates, or its business partners. As noted above, the Bureau anticipates that credit plans in both of these latter scenarios will be subject to Regulation Z in their own right, but has concluded that they should not be subject to heightened regulation as a result of this final rule.

The Bureau also declines to issue a ban on overdraft. Very few existing products offer credit features in connection with prepaid accounts. As such, the Bureau does not believe such a blanket prohibition is necessary or appropriate to address the potential consumer harm in this market at this time and in light of the other consumer protections that the final rule provides. Indeed, the Bureau believes that the final rule, unlike an outright ban on prepaid overdraft, which several consumer groups and one issuing bank suggested, appropriately balances the need to address consumers' need and

[583] TILA section 102(a), 15 U.S.C. 1601(a).

[584] TILA section 169; 15 U.S.C. 1666h(a).

[585] *See* § 1026.12(d). 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.

[586] *See* § 1026.61(c).

demand for credit with the need to protect against consumer harm.

Finally, and as noted above, the Bureau received several comments from industry expressing concern that the Bureau's proposed interpretation of certain credit-related definitions in Regulation Z could impact the status of overdraft features accessed in connection with deposit accounts. As the Bureau noted in the proposal, the provisions addressing prepaid overdraft in the final rule are not intended 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. The Bureau continues to study deposit account overdraft services on checking accounts and will propose any further regulatory consumer protections in that rulemaking initiative.[587] In addition to that initiative, the Bureau notes that it recently issued a Notice of Proposed Rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans (Payday NPRM).[588] The Bureau proposed excluding credit card accounts under an open-end (not home-secured) consumer credit plan from coverage under the Payday NPRM pursuant to proposed § 1041.3(e)(3).[589] The Bureau notes that under this final rule, a covered separate credit feature is a credit card account under an open-end (not home-secured) consumer plan under Regulation Z and accordingly, would be exempt from coverage for purposes of the Payday NPRM.

The implications of the Bureau's approach to credit products offered in conjunction with prepaid accounts for Military Lending Act compliance. As discussed above, the DOD recently issued a final rule expanding 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.[590] Under the MLA and the implementing regulation, a creditor generally may not apply a 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.[591] In addition, the rule includes a limited exemption for credit card accounts—until October 3, 2017, consumer credit covered by the MLA and the implementing regulation will not include credit extended in a credit card account under an open-end (not home-secured) consumer credit plan.

Thus, starting October 3, 2017, fees levied for credit features (including overdraft services) on a hybrid prepaid-credit card held by military service members or their dependents would, as a result of the MLA and the Bureau's final rule on prepaid accounts in combination, generally be included in calculating the MAPR for a billing cycle unless excluded under the reasonable bona fide fee exception.

The Bureau sought comment on the consequences, if any, from the combined effect of the two rules with respect to overdraft services and credit features on prepaid accounts held by military service members. With the exception of generalized comments acknowledging the potential overlap outlined above, commenters did not provide any specific feedback in response to this request.

Other implications of the Bureau's approach to credit products offered in conjunction with prepaid accounts: 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 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 final rule includes a number of provisions 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 amending the provision in Regulation Z 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 EFT when a transaction accesses both funds in the prepaid account and credit from the overdraft credit feature.[592]

The Bureau sought comment on these specific amendments and whether further amendments or guidance would be appropriate. The Bureau also sought comment on consumer and industry experiences with similar multipurpose products historically, and whether they yield useful lessons for further refining the Bureau's proposal with regard to prepaid cards. The Bureau did not receive any specific comments in response to these requests.

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. In the proposal, the Bureau noted that its 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 requested 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. The Bureau did not receive any specific comments in response to this request.

Subpart A—General

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

Overview of Final Changes to Definitions

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above and in the section-by-section analysis of § 1026.61 below, the Bureau is adopting a new definition of ''hybrid prepaid-credit card'' in new § 1026.61[593] to describe the circumstances in which the Bureau has decided to regulate prepaid cards[594] as credit cards under Regulation Z when they can access credit offered in connection with a prepaid account. The Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of

[587] *See* CFPB's Unified Agenda for Spring 2016, *available at http://www.consumerfinance.gov/about-us/blog/spring-2016-rulemaking-agenda/*.

[588] *See* 81 FR 47864 (July 22, 2016).

[589] *See id.* at 48168.

[590] 80 FR 43560 (July 22, 2015).

[591] 32 CFR 232.4(b).

[592] See the section-by-section analysis of § 1026.13(i) below.

[593] Throughout the section-by-section analyses of Regulations E and Z, the term ''hybrid prepaid-credit card'' refers to a hybrid prepaid-credit card as defined in new § 1026.61.

[594] New § 1026.61(a)(5)(vii) defines ''prepaid card'' to mean ''any card, code, or other device that can be used to access a prepaid account.'' The term ''prepaid card'' includes a prepaid account number. *See* new comment 61(a)(5)(vii)–1. Consistent with final Regulation E, new § 1026.61(a)(5)(v) defines ''prepaid account'' to mean ''a prepaid account as defined in Regulation E, 12 CFR 1005.2(b)(3).''

credit. A number of supporting definitions that help to distinguish hybrid prepaid-credit cards from prepaid cards that are not credit cards under Regulation Z are provided in new § 1026.61 as described further below.

The Bureau is making conforming changes to general Regulation Z definitions in both existing §§ 1026.2 and 1026.4 to effectuate and reflect these distinctions. For example, the Bureau is making amendments to the definition of ''credit card'' in existing § 1026.2(a)(15)(i) and related commentary to make clear that the term ''credit card'' includes a hybrid prepaid-credit card. The Bureau also is making several amendments to the commentary relating to several other terms that are defined in existing § 1026.2 that pertain to the general regulation of credit and credit cards under Regulation Z. Specifically, the Bureau is amending the commentary regarding such terms as ''card issuer'' in existing § 1026.2(a)(7), ''open-end credit'' in existing § 1026.2(a)(20), and ''credit card account under an open-end (not home-secured) consumer credit plan'' in existing § 1026.2(a)(15)(ii). Finally, the Bureau also is amending the definition of ''finance charge'' in existing § 1026.4 and related commentary with respect to credit features accessible by hybrid prepaid-credit cards and with respect to other credit features that are accessible by prepaid cards that are not credit cards under Regulation Z. These changes are briefly summarized below before the more detailed discussion of specific amendments to specific subparagraphs of existing §§ 1026.2 and 1026.4, and their related commentary.

Definition of ''credit card.'' Regulation Z defines the term ''credit card'' in current § 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.'' As discussed below, the Bureau is adopting a new definition of ''hybrid prepaid-credit card'' in new § 1026.61 which sets forth the circumstances in which a prepaid card is a credit card under Regulation Z. Accordingly, the Bureau is amending the general definition of ''credit card'' in existing § 1026.2(a)(15)(i) to state expressly that a prepaid card that is a hybrid prepaid-credit card as defined in new § 1026.61 is a credit card under Regulation Z. *See also* new § 1026.61(a)(1) and new comment 2(a)(15)–2.i.F. As described in new § 1026.61(a)(1), a prepaid card that is not a ''hybrid prepaid-credit card'' is not a credit card for purposes of Regulation Z. *See also* new comment 2(a)(15)–2.ii.D.

More specifically, as discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a ''covered separate credit feature.'' Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as ''non-covered separate credit features,'' as discussed in the section-by-section analysis of § 1026.61(a)(2). Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit.[595] A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4).

Definition of ''card issuer.'' The term ''card issuer'' is generally defined in existing § 1026.2(a)(7) to mean ''a person that issues a credit card or that person's agent with respect to the card.'' Under the general rules applicable to credit cards, card issuers are subject to certain direct regulation in their own right, and a card issuer that extends credit is a creditor under Regulation Z even if it does not meet the general definition of ''creditor'' under existing § 1026.2(a)(17)(i). Because under the final rule a hybrid prepaid-credit card is a credit card under Regulation Z, a prepaid account issuer is a ''card issuer'' under existing § 1026.2(a)(7) when it issues a hybrid prepaid-credit card. In addition, to further apply these concepts in the prepaid context, the Bureau is amending the commentary to existing § 1026.2(a)(7) to reflect that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, an affiliate or business partner offering the credit feature (if applicable) also is a ''card issuer'' under Regulation Z. Accordingly, under existing § 1026.2(a)(17)(iii) and (iv), the person offering the covered separate credit feature accessible by a hybrid prepaid-credit card (whether that person is a prepaid account issuer, its affiliate, or its business partner) also is a creditor under Regulation Z.

Definition of ''open-end credit'' and ''credit card account under an open-end (not home-secured) consumer credit plan.'' As discussed further below, certain credit card rules only apply to credit card accounts under an open-end (not home-secured) consumer credit plan as defined in existing § 1026.2(a)(15)(ii). This definition in turn hinges largely on whether a credit card can access ''open-end credit'' as defined in existing § 1026.2(a)(20). The term ''open-end credit'' is defined 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

[595] Throughout the section-by-section analyses of Regulations E and Z, the term ''incidental credit'' is used to refer to credit that meets the conditions of new § 1026.61(a)(4).

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 Bureau believes that a covered separate credit feature accessible by a hybrid prepaid-credit card generally will meet the definition of ''open-end credit,'' and is amending the regulation text and commentary to facilitate the classification of a covered separate credit feature accessible by a hybrid prepaid-credit card as ''open-end credit'' and a ''credit card account under an open-end (not home-secured) consumer credit plan.'' A person that is offering a covered separate credit feature involving open-end (not home-secured) credit that is accessible by a hybrid prepaid-credit card will be subject to Regulation Z's open-end (not home-secured) rules and credit card rules in subparts B and G.

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.

Definition of finance charge. As discussed above, whether a creditor may impose a finance charge from time to time on an outstanding balance is one of the elements that helps determine coverage as open-end credit. As discussed above, certain credit card rules apply only to open-end credit that is accessible by a credit card. The term ''finance charge'' generally is defined in existing § 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 as 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'' as part of the exclusion for overdraft services on checking accounts as discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above. For example, existing § 1026.4(c)(3) excludes 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. In addition, existing § 1026.4(c)(4) excludes fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

The Bureau is amending existing § 1026.4 and its commentary to provide that the exclusion in existing § 1026.4(c)(3) does not apply to credit offered in connection with a prepaid account as defined in new § 1026.61 and that the exclusion in existing § 1026.4(c)(4) does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. As discussed further below, these amendments help to effectuate application of certain credit card rules to covered separate credit features accessible by hybrid prepaid-credit cards and to better reflect the full cost of credit. In addition, the Bureau is adding new provisions to final § 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 offered in connection with a prepaid account. All of these changes are discussed in more detail below in the section-by-section analysis of § 1026.4.

2(a)(7) Card Issuer

As discussed above, the final rule contains additional guidance on the definition of ''card issuer'' with respect to credit offered in connection with prepaid accounts. TILA section 103(o) defines the term ''card issuer'' as any person who issues a credit card, or the agent of such person with respect to such a card.[596] Consistent with the TILA definition, Regulation Z defines the term ''card issuer'' in existing § 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 existing § 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* existing §§ 1026.12 and 1026.60; for card issuers offering a ''credit card account under an open-end (not home-secured) consumer credit plan,'' *see, e.g.,* existing §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), and 1026.51 through 1026.59. In addition, under existing § 1026.2(a)(17)(iii) and (iv), card issuers that extend credit are considered creditors for purposes of Regulation Z.

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, current 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, current 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, current comment 2(a)(7)–1 also 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 Bureau's Proposal

Proposed comment 2(a)(15)–2.i.F would have provided that the term ''credit card'' generally includes a prepaid card that is a single device that may be used from time to time to access a credit plan.[597] Under the proposal, a person that issues a prepaid card that is a credit card would have been a ''card issuer'' under existing § 1026.2(a)(7).

The proposal also would have amended existing comment 2(a)(7)–1 to provide specific guidance on the term ''agent'' for purposes of existing § 1026.2(a)(7) where a credit plan offered by a third party is accessed by a prepaid card that is a credit card. Under the proposal, the language of existing comment 2(a)(7)–1 would have

[596] 15 U.S.C. 1602(o).

[597] The term ''prepaid card'' would have been 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 would have been defined in proposed § 1026.2(a)(15)(vi). Proposed § 1026.2(a)(15)(vi) would have defined the term ''prepaid account'' to mean a prepaid account as defined in Regulation E proposed § 1005.2(b)(3).

been moved to proposed comment 2(a)(7)–1.i. In addition, the Bureau proposed to add comment 2(a)(7)–1.ii that would have built on the last sentence of current comment 2(a)(7)–1 and provided that 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 card would have been an agent of the person issuing the prepaid card and thus, would have been a card issuer with respect to the prepaid card that is a credit card.

Under proposed comment 2(a)(15)–2.i.F, the Bureau would have excluded from the regulation as a credit card situations in which a 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. Consistent with this approach, proposed comment 2(a)(7)–2 would have explained that a person is not a card issuer where a prepaid card only accesses credit meeting this description.

Comments Received

Two industry trade associations indicated that the Bureau should limit the expansion of the term ''agent'' to creditors that have a direct agreement with the prepaid account issuer so that the third-party creditor is in a position to know that it has obligations under Regulation Z with respect to the prepaid card that is a credit card. Several consumer groups supported the proposed rule to consider a third party that offers an open-end credit plan accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z. They believed that this provision would help avoid evasion by third-party credit plans linked to prepaid cards. One consumer group commenter indicated that if the prepaid account issuer contracts with a third party to market credit to account holders, the Bureau should provide that both companies are classified as card issuers that must comply with the rules. This commenter indicated that without this safeguard, an affiliated third party could offer credit accessed by the prepaid card that would not be subject to the proposed rules.

The Final Rule

Consistent with the general approach in § 1026.61, the Bureau is limiting the circumstances in which an unaffiliated third party that can extend credit through a separate credit feature is considered an ''agent'' of a prepaid account issuer relative to the proposal. As discussed in more detail below, the Bureau is moving the existing language of current comment 2(a)(7)–1 to new comment 2(a)(7)–1.i. In addition, the Bureau is adding new comment 2(a)(7)–1.ii to provide that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61 where that credit feature is offered by an affiliate or business partner of the prepaid account issuer, as those terms are defined in new § 1026.61, the affiliate or business partner offering the credit feature is an agent of the prepaid account issuer and thus, is itself a card issuer with respect to the hybrid prepaid-credit card.

In contrast, if a person offers a credit feature accessible by a prepaid card that does not meet the definition of a hybrid prepaid-credit card under new § 1026.61, such a person is not a ''card issuer'' under final § 1026.2(a)(7) with respect to the prepaid card. Accordingly, the Bureau is not finalizing language that it had proposed in comment 2(a)(7)–2 to effectuate the narrower exclusion contemplated under the proposal. Instead, the Bureau is adopting new language in final comment 2(a)(7)–2 consistent with new § 1026.61 with regard to treatment of prepaid cards that are not hybrid prepaid-credit cards as discussed in that section. Each scenario is discussed further below.

Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, new § 1026.61(a)(2)(i) defines a separate credit feature accessible by a hybrid prepaid-credit card' as a ''covered separate credit feature.'' Specifically, new § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. If both conditions are met, the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

New § 1026.61(a)(5)(i) and (iii) and their related commentary define ''affiliate'' and ''business partner'' respectively. Under new § 1026.61(a)(5)(i), an affiliate is any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*). Under new § 1026.61(a)(5)(iii), a business partner is a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature, where the person or its affiliate has an ''arrangement'' with a prepaid account issuer or its affiliate. New comment 61(a)(5)(iii)–1 describes two types of ''arrangements'' that would make such a person that can extend credit a ''business partner'' of the prepaid account issuer under new § 1026.61(a)(5)(iii). As described in new comment 61(a)(5)(iii)–1.i, the first arrangement is where the unaffiliated person that can extend credit, or its affiliate, has an agreement with the prepaid account issuer, or its affiliate, that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from a separate credit feature offered by the person that can extend credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. New comment 61(a)(5)(iii)–1.i provides, however, that the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network.

Second, new comment 61(a)(5)(iii)–1.ii provides that an unaffiliated person that can extend credit through a separate credit feature is a business partner of the prepaid account issuer if (1) the prepaid account issuer or its affiliate has a business, marketing, or promotional agreement or other arrangement with the person that can extend credit, or its affiliate, where the agreement or arrangement provides that prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person who is extending credit, or that the credit feature will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to link the separate credit feature to the prepaid account to be used as an overdraft credit feature); and (2) at the time of the marketing agreement or arrangement, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the

course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In this case, this requirement is satisfied even if there is no specific agreement between the parties that the card can access the separate credit feature, as described above under new comment 61(a)(5)(iii)–1.i. For example, this requirement is satisfied even if the draw, transfer, or authorization of the draw or transfer from the separate credit feature is effectuated through a card network or payment network.

The Bureau is amending the commentary to existing § 1026.2(a)(7)'s definition of card issuer to effectuate coverage of these relationships. Specifically, under the final rule, the Bureau is moving the existing language of current comment 2(a)(7)–1 to new comment 2(a)(7)–1.i. In addition, the Bureau is adding new comment 2(a)(7)–1.ii to provide that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card where that credit feature is offered by an affiliate or business partner of the prepaid account issuer, the affiliate or business partner offering the credit feature is an agent of the prepaid account issuer and thus, is itself a card issuer with respect to the hybrid prepaid-credit card. Consistent with the general existing definition of card issuer, the Bureau believes that it is appropriate to consider a prepaid account issuer's affiliate or business partner to be an ''agent'' of the prepaid account issuer because, in those cases, there is a sufficient connection between the parties such that the affiliate or business partner should know that its credit feature is accessible by a prepaid card as an overdraft credit feature for the prepaid account.

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. With regard to hybrid prepaid-credit cards, the final rule incorporates and expands upon this concept of when a person is an agent of a card issuer. The Bureau believes that the new, more expansive language provides additional clarity as to when there is an agent relationship in the prepaid context and, therefore, prevents circumvention of the final rules applicable to covered separate credit features accessible by hybrid prepaid-credit cards as defined by new § 1026.61 that are offered by the prepaid account issuer's affiliates or business partners.

In particular, the Bureau is concerned that without new comment 2(a)(7)–1.ii, prepaid account issuers could structure arrangements with their affiliates or business partners to avoid an agency relationship under State law. Such a result could frustrate the operation of certain consumer protections provided in the final rule. In addition, without considering the person that can extend credit through the covered separate credit feature to be an agent of the prepaid account issuer (and thus considering both the prepaid account issuer and the person that can extend credit to be ''card issuers''), it may not be clear whether the person that can extend credit through the covered separate credit feature or the prepaid account issuer must comply with particular provisions in Regulation Z. For example, existing § 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 cases where the prepaid account issuer's affiliate or business partner offers the covered separate credit feature accessible by the hybrid prepaid-credit card, it would not be clear what obligations under existing § 1026.51(a), if any, apply to the prepaid account issuer (who is a ''card issuer'' but who is not offering the credit card account) and what obligations, if any, apply to the affiliate or business partner (who is offering the credit card account but is not a card issuer) if the affiliate or business partner were not a card issuer under final § 1026.2(a)(7) with respect to the hybrid prepaid-credit card.

Accordingly, under the final rule, new comment 2(a)(7)–1.ii provides that with respect to a prepaid card that is a hybrid prepaid-credit card that can access a covered separate credit feature offered by an affiliate or business partner as those terms are defined in new § 1026.61, the affiliate or business partner offering the credit feature that is accessible by the hybrid prepaid-credit card is an agent of the prepaid account issuer and thus, is a card issuer with respect to the hybrid prepaid-credit card. As a result, in the example above related to existing § 1026.51(a), the affiliate or business partner would be a ''card issuer'' for purposes of that provision and would be required to comply with it.

Nonetheless, as discussed in more detail below and in the section-by-section analysis of § 1026.61(a)(2), the Bureau has decided to provide that a prepaid card is not a hybrid prepaid-credit card with respect to a credit feature that is offered by a third party that is not an affiliate or business partner of a prepaid account issuer, even if the consumer decides to link his or her prepaid card to the credit feature offered by the third party. This type of credit feature is a ''non-covered separate credit feature'' as defined in new § 1026.61(a)(2)(ii). The Bureau does not believe that it is appropriate to subject such an unrelated third party to the provisions in the final rule applicable to hybrid prepaid-credit cards. In this case, there is not a sufficient connection between the prepaid account issuer and the unrelated third party, and the unrelated third party may not know that its separate credit feature is functioning as an overdraft credit feature with respect to the prepaid account.

Accordingly, as discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to the non-covered separate credit feature discussed above. However, as described in new § 1026.61(a)(2)(ii), the unrelated third party that offers the non-covered separate credit feature typically will be subject to Regulation Z in its own right based on the terms and conditions of the separate credit feature, independent of the connection to the prepaid account.

Credit Features That Are Not Accessible by Hybrid Prepaid-Credit Cards

As discussed above, the Bureau proposed to exclude from the regulation as a credit card situations in which a 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 the credit is not payable by written agreement in more than four installments. Consistent with this approach, proposed comment 2(a)(7)–2 would have explained that a person is not a card issuer where a prepaid card only accesses credit meeting this description. As discussed above, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. Accordingly, the Bureau is not finalizing language that it had proposed in comment 2(a)(7)–2 to effectuate the narrower exclusion contemplated under the

proposal. Instead, the Bureau is adopting new language in final comment 2(a)(7)–2 consistent with new § 1026.61 with regard to prepaid cards that are not hybrid prepaid-credit cards, as discussed in that section. Specifically, final comment 2(a)(7)–2 provides cross-references to new § 1026.61(a), new comment 61(a)(2)–5.iii, and new comment 61(a)(4)–1.iv for guidance on the applicability of Regulation Z in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards. The Bureau's intent is to assure that where the prepaid card is not a hybrid prepaid-credit card with respect to a credit feature, the person that is offering the credit feature is not deemed to be a card issuer under final § 1026.2(a)(7) with respect to the prepaid card.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. With respect to separate credit features, there are two circumstances, described in new § 1026.61(a)(2)(ii), where a prepaid card is not a hybrid prepaid-credit card when it accesses a separate credit feature. The first is where the prepaid card cannot be used to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second is where the separate credit feature is offered by an unrelated third party, rather than the prepaid account issuer, its affiliate, or its business partner. In addition, under new § 1026.61(a)(4), a prepaid card is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

2(a)(14) Credit

TILA section 103(f) defines the term ''credit'' as the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.[598] Consistent with the definition of credit in TILA, Regulation Z defines ''credit'' in existing § 1026.2(a)(14) to mean ''the right to defer payment of debt or to incur debt and defer its payment.'' Under existing § 1026.2(a)(17)(i), 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. Under existing § 1026.2(a)(17)(iii), 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.

The Bureau's Proposal

Proposed comment 2(a)(14)–3 would have provided that credit, for purposes of existing § 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 have included 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 proposed definition would have included 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.

Comments Received

Several commenters, including industry trade associations, a program manager, and a credit reporting agency, asserted that overdraft credit does not meet the definition of ''credit'' because, with respect to overdraft credit, there is no ''right to defer payment'' and/or ''no right to incur debt.'' One industry trade association and one issuing bank requested that the Bureau clarify that the treatment of overdrafts in connection with prepaid accounts as credit for Regulation Z purposes is not intended to imply any similar treatment under State laws. Several industry commenters suggested that the Bureau should consider a dollar threshold below which overdraft transactions would not be covered as ''credit'' under Regulation Z. For example, one credit union service organization urged the Bureau to set a threshold of $250 for when negative balances on the prepaid account are considered credit, such that negative balances on the prepaid account exceeding $250 in magnitude would meet the definition of ''credit'' and negative balances on the prepaid account of $250 in magnitude or below would not be ''credit'' under Regulation Z.

The Final Rule

Definition of Credit

As discussed in more detail below, the Bureau is adopting new comment 2(a)(14)–3 as proposed with technical revisions to simplify the language of the comment and to be consistent with new § 1026.61. This comment provides that credit includes authorization of a transaction on an asset feature of a prepaid account as defined in § 1026.61 where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction. It also includes settlement of a transaction on an asset feature of a prepaid account where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled to cover the amount of the transaction. Credit also includes a transaction where the consumer has sufficient or available funds in the asset feature of a prepaid account to cover the amount of the transaction at the time the transaction is authorized but insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction amount at the time the transaction is settled. The comment also includes a cross-reference to new § 1026.61 and related commentary on the applicability of this regulation to credit extended in connection with a prepaid account.

The Bureau continues to believe that new comment 2(a)(14)–3 reflects a straightforward interpretation of the statutory term ''credit.'' The Bureau believes that plain language of the definition of ''credit'' in TILA covers the situation when a consumer makes a transaction that exceeds the funds in the consumer's account and a person elects to cover the transaction by advancing funds to the consumer. Nothing in the statutory definition (or elsewhere in TILA) 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

[598] 15 U.S.C. 1602(f).

sufficient or available funds in the asset feature of 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. Thus, the person, in extending overdraft funds, has provided the consumer with ''the right . . . to incur debt and defer its payment.''

The Bureau further emphasizes that the final rule does not change how overdraft services on accounts other than prepaid accounts are treated under Regulation Z. As discussed in more detail in the *Overview of the Final Rule's Amendments to Regulation Z* 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 under final § 1026.4(c)(3). Thus, under this final rule, 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'' with respect to the overdraft service under the general definition of creditor set forth in § 1026.2(a)(17)(i), 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 card issuer or a creditor by issuing a debit card that accesses an overdraft service. Specifically, existing comment 2(a)(15)–2.ii.A 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. Thus, a person does not become a card issuer under existing § 1026.2(a)(7) and does not become a creditor under existing § 1026.2(a)(17)(iii) or (iv) by issuing a debit card that accesses an overdraft service. The final rule does not change the provisions in Regulation Z effectuating this treatment of overdraft services on accounts other than prepaid accounts.

Definition of Credit Under State Laws

As discussed above, one industry trade association and one issuing bank requested that the Bureau clarify that the treatment of overdrafts in connection with prepaid accounts as credit for Regulation Z purposes is not intended to imply any similar treatment under State laws. The Bureau does not provide any specific guidance on how the treatment of overdrafts in connection with prepaid accounts as credit for Regulation Z purposes may impact State laws. The State law itself will determine whether, and the extent to which, the State law is impacted by the treatment of overdrafts in connection with prepaid accounts as credit under Regulation Z.

Threshold Amount of Negative Balance

As discussed above, several industry commenters suggested that the Bureau should consider a dollar threshold below which overdraft transactions would not be covered as ''credit'' under Regulation Z. For example, one credit union service organization urged the Bureau to set a threshold of $250 for when overdraft funds are considered ''credit'' under Regulation Z, where negative balances on the prepaid account exceeding $250 in magnitude would meet the definition of ''credit'' and negative balances on the prepaid account of $250 in magnitude or below would not be ''credit'' under Regulation Z. The Bureau does not adopt such an approach. The Bureau is concerned that allowing consumers to incur substantial debt in connection with a prepaid account that most consumers do not intend to use as a credit account may pose a risk to those consumers by compromising their ability to manage and control their finances. Thus, while new § 1026.61(a)(4) would permit a prepaid account issuer to offer an incidental ''payment cushion'' of $10 without triggering the rules governing credit cards under Regulation Z so long as the issuer generally does not impose credit-related fees, the Bureau believes that the provision of a higher dollar amount of credit in connection with a prepaid account should be subject to full credit card protections unless otherwise excluded under new § 1026.61(a)(4).

2(a)(15)

2(a)(15)(i) Credit Card

TILA section 103(*l*) defines ''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.[599] Regulation Z defines the term ''credit card'' in existing § 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)–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* existing §§ 1026.12 and 1026.60; for card issuers offering a ''credit card account under an open-end (not home-secured) consumer credit plan,'' *see, e.g.,* existing §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), and 1026.51 through 1026.59. Any card issuer that extends credit also is a creditor under Regulation Z and must comply with certain disclosure and other requirements in Regulation Z, as discussed in the section-by-section analysis of § 1026.2(a)(17) below. The proposal would have provided 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 proposed § 1026.2(a)(15)(vi) consistent with proposed Regulation E; and (2) account numbers that are not prepaid cards 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 does 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 proposed § 1026.2(a)(15)(vii). Each of these circumstances is discussed in more detail below.

Hybrid Prepaid-Credit Cards

Under the proposal, credit plans, including overdraft services and overdraft lines of credit, that are directly accessed by prepaid cards generally would have been credit card accounts under Regulation Z. In particular, proposed comment 2(a)(15)–2.i.F would have provided 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 have been a credit card if it satisfied the requirements of proposed comment 2(a)(15)–2.i.F. The proposal would have revised existing comment 2(a)(15)–2.ii.C that provides guidance on when account numbers are credit cards. The proposal

[599] 15 U.S.C. 1602(*l*).

would have revised existing comment 2(a)(15)–2.ii.C to provide that the current guidance for when a prepaid card is a credit card is set forth in proposed comment 2(a)(15)–2.i.F, rather than in comment 2(a)(15)–2.ii.C. As discussed below and in more detail in the section-by-section analysis of § 1026.61, the Bureau is revising from the proposal the circumstances in which a prepaid card is a credit card under Regulation Z (*i.e.,* a hybrid prepaid-credit card). See the section-by-section analysis of § 1026.61 for a detailed description of the proposal to define prepaid cards as credit cards, the comments received on the proposal to define prepaid cards as credit cards, and the circumstances in which the final rule defines a prepaid card as a hybrid prepaid-credit card.

The Bureau is making conforming revisions to existing § 1026.2(a)(15)(i) to provide that the term ''credit card'' includes a hybrid prepaid-credit card, as defined in § 1026.61. In addition, the Bureau is revising new comment 2(a)(15)–2.i.F from the proposal to provide that the term ''credit card'' includes a prepaid card that is a hybrid prepaid-credit card, as defined in new § 1026.61. The Bureau also is adding new comment 2(a)(15)–2.ii.D to provide that the term ''credit card'' does not include a prepaid card that is not a hybrid prepaid-credit card, as defined in new § 1026.61. The Bureau also is revising existing comment 2(a)(15)–2.ii.C that provides guidance on when account numbers are credit cards. The Bureau is revising this comment to provide that the rules in new § 1026.61 and related commentary determine when a hybrid prepaid-credit card that solely is an account number is a credit card, as discussed in new comment 61(a)(1)–2.

As discussed above, if a person issues a prepaid card that is a hybrid prepaid-credit card, the person is a ''card issuer'' under final § 1026.2(a)(7) with respect to the prepaid card. In addition, with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, an affiliate or business partner offering the credit feature (if applicable) also is a ''card issuer'' under final § 1026.2(a)(7). Under existing § 1026.2(a)(17)(iii) and (iv), the person also is a ''creditor'' if the card issuer extends credit under a covered separate credit feature accessible by the hybrid prepaid-credit card as described above. If the card issuer extends open-end (not home-secured) 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 in the section-by-section analysis of § 1026.2(a)(20) below, the Bureau believes that prepaid account issuers, their affiliates, or their business partners that offer covered separate credit features accessible by hybrid prepaid-credit cards will be creditors offering open-end (not home-secured) credit under Regulation Z. See the section-by-section analysis of § 1026.2(a)(17) below for a discussion of situations in which a creditor may not be offering open-end credit in relation to a prepaid account.

Account Numbers That Are Not Prepaid Cards

Currently, under comment 2(a)(15)–2.ii.C, an account number for a credit plan is a credit card when that 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. However, if the account number also can 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, regardless of whether the creditor treats such transactions as purchases, cash advances, or some other type of transaction.

The Bureau's proposal. The Bureau proposed not to follow the current guidance in existing comment 2(a)(15)–2.ii.C in the context of credit accessed in connection with prepaid accounts. Instead, proposed § 1026.2(a)(15)(vii) would have included within the definition of credit card an ''account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.'' As used in the proposal, this term would have meant 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.

Proposed comment 2(a)(15)–2.i.G would have provided that these account numbers were credit cards under the proposal. In addition, the proposal would have revised existing comment 2(a)(15)–2.ii.C to provide that the current guidance for when an account number is a credit card under Regulation Z would not have applied to these account numbers, as described in proposed § 1026.2(a)(15)(vii) and proposed comment 2(a)(15)–2.i.G. Proposed comment 2(a)(15)–5 would have provided additional guidance on these account numbers. Specifically, proposed comment 2(a)(15)–5 would have provided that 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. Nonetheless, under proposed comment 2(a)(15)–5, a credit plan accessible by a consumer through checks or in-person withdrawals would have constituted 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 allowed deposits directly into particular prepaid accounts specified by the creditor but did not allow the consumer to deposit directly extensions of credit into other asset accounts.

With respect to account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, the proposed rule would have covered credit plans that are not accessed directly by prepaid cards but are structured as ''push'' accounts. 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. In the proposal, the Bureau expressed concern that these types of credit plans could act as substitutes for credit plans directly accessible by a prepaid card. The Bureau did not, however, propose to cover general purpose lines of credit where a consumer has the freedom to choose where to deposit directly the credit funds.

Comments received. Consumer group commenters indicated that the proposal with respect to push accounts was too limited. Several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group

commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit is deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

One issuing bank and one law firm writing on behalf of a coalition of prepaid issuers did not support subjecting push accounts to credit card rules. These industry commenters indicated that the Board should leave in place the rule currently in Regulation Z that determines when an account number for a credit plan is a credit card. One of these industry commenters indicated that attempting to cover push accounts as credit card accounts under the proposal would create an overly complex regulatory regime to address the perceived risk of circumvention or evasion of the rules for overdraft plans set forth in the proposal. This commenter believed the Bureau has better tools (*e.g.,* its unfair, deceptive, or abusive acts or practices authority) to address circumvention or evasion, as well as the other risks of consumer harms discussed in the proposal.

One industry trade association commenter indicated that it would be inappropriate to treat the line of credit (or its associated account number) as a credit card when the consumer has the choice of whether to use the line of credit to cover specified overdrafts or to use the line of credit funds for other purposes. This commenter believed that the consumer's ability to choose how to use the line of credit makes it clear that the line of credit is a general use line of credit and not a substitute for an overdraft line of credit.

The final rule. Upon review of the comments and its own analysis, the Bureau has decided not to adopt the proposal to provide that an account number for a credit account would be a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In proposing these provisions, the Bureau was concerned that a prepaid account issuer and a creditor could design arrangements to circumvent the proposed rules in Regulation Z applicable to prepaid cards that are credit cards. In this case, a third-party creditor could have an arrangement with the prepaid account issuer such that credit from the credit account is pushed from the credit account to the prepaid account during the course of a particular prepaid account transaction to prevent the transaction from taking the prepaid account balance negative. These provisions related to credit account numbers were designed to prevent this type of evasion.

The Bureau is addressing this type of evasion by generally covering a prepaid card as a credit card (*i.e.,* ''hybrid prepaid-credits card'') when the card can access a separate credit feature that functions as an overdraft credit feature and is offered by a prepaid account issuer, its affiliate, or its business partner. Specifically, new § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a ''covered separate credit feature.'' Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature. In this case, as described in new comment 61(a)(2)–1.ii, the prepaid card is a hybrid prepaid-credit card with respect to the covered separate credit feature regardless of whether (1) the credit is pushed from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) the credit is pulled from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

In addition, as described in new comment 61(a)(2)–1.iii, a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature, as discussed above, regardless of whether the covered separate credit feature can only be used as an overdraft credit feature, solely accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways. For the reasons set forth in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that consumers will benefit from the application of the credit card rules generally to a credit account that functions as an overdraft credit feature in connection with a prepaid account when that overdraft feature is offered by a prepaid account issuer, its affiliate, or its business partner, regardless of whether the credit account can be used exclusively as an overdraft credit feature. In addition, the Bureau is concerned about potential evasion if the provisions applicable to overdraft credit features could be avoided simply by providing other uses for the credit account.

The Bureau believes that the provisions in the final rule described above with respect to a covered separate credit feature adequately capture situations where a separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner functions as an overdraft credit feature in relation to a prepaid account. Thus, the Bureau believes that it is no longer necessary to treat a credit account number as a credit card to capture situations when the credit account may function as an overdraft credit feature in relation to the prepaid account. As a result, the Bureau has not adopted proposed § 1026.2(a)(15)(vii) and proposed comments 2(a)(15)–2.i.G and 2(a)(15)–5. The Bureau also has not adopted proposed revisions to existing comment 2(a)(15)–2.ii.C related to account numbers described in proposed § 1026.2(a)(15)(vii) and proposed comment 2(a)(15)–2.i.G. The Bureau proposed changes to other provisions in Regulation Z and related commentary to provide guidance on how these provisions would apply to such account numbers, which would have been credit cards under the proposal. The Bureau has not adopted these proposed changes to provisions in Regulation Z related to

these account numbers.[600] The Bureau also proposed changes to certain provisions in Regulation E and related commentary to provide guidance on how these Regulation E provisions would apply to such account numbers. The Bureau has not adopted these proposed changes to provisions in Regulation E related to these account numbers.[601]

As discussed above, several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit. Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit is deposited or transferred to prepaid accounts if either (1) the creditor is the same institution, as or has a business relationship with, the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit.

As discussed above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

Debit Cards

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 have defined 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.'' The proposed definition of ''debit card'' also would have specified that it does not include a prepaid card. Because the term ''debit card'' under the proposal would not have included all cards that access asset accounts, existing comment 2(a)(15)–2.i.B would have been revised to be consistent with the proposed definition of debit card. Specifically, proposed comment 2(a)(15)–2.i.B would have been revised to provide that the term ''credit card'' includes 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). This comment also would have been revised to provide a cross-reference to existing comment 2(a)(15)–2.ii.C for guidance on whether a debit card that is solely an account number is a credit card. No substantive changes were intended to the current rules for when debit cards are credit cards under existing § 1026.2(a)(15)(i).

The Bureau did not receive specific comment on this proposed definition. The Bureau is adopting the definition of ''debit card'' as proposed with one technical revision to provide a cross-reference to the definition of ''prepaid account'' in new § 1026.61. The Bureau also is adopting the changes to existing comment 2(a)(15)–2.i.B as proposed.

2(a)(15)(ii) Credit Card Account Under an Open-End (not Home-Secured) Consumer Credit Plan

Regulation Z defines the term ''credit card account under an open-end (not home-secured) consumer credit plan'' in existing § 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.'' As discussed above, 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.,* existing §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), and 1026.51 to 1026.59.

The proposal would have clarified that the exception in current § 1026.2(a)(15)(ii)(B) regarding overdraft lines of credit accessed by a debit card or account number would not have applied to open-end credit plans accessed by prepaid cards that would have been credit cards under the proposal. The proposed definition of ''debit card'' in proposed § 1026.15(a)(2)(iv) would have excluded a prepaid card.[602] Thus, the exception in existing § 1026.2(a)(15)(ii)(B) would not have applied to overdraft lines of credit that are accessed by a prepaid card. In addition, the proposal would have revised existing § 1026.2(a)(15)(ii)(B) to only include the exception for overdraft lines of credit accessed by a debit card. The proposal also would have moved the exception for overdraft lines of credit that are accessed by account numbers from existing § 1026.2(a)(15)(ii)(B) to proposed § 1026.2(a)(15)(ii)(C). The proposal also would have amended proposed § 1026.2(a)(15)(ii)(C) and existing comment 2(a)(15)–4 to provide that the exception would not have applied to an overdraft line of credit that is accessed by an account number

[600] Specifically, the proposal would have revised or added the following provisions in Regulation Z related to these account numbers: §§ 1026.2(a)(15)(ii)(C)(*2*) and (vii); 1026.4(b)(2)(ii), (c)(3), and (4); 1026.7(b)(11)(ii)(A)(*2*); 1026.12(d)(3)(ii) and (h) (renumbered in the final rule as § 1026.61(c)); 1026.60(a)(5)(iv); and comments 2(a)(15)–2.i.G, 2(a)(15)–2.ii.C, 2(a)(15)–3.ii, 2(a)(15)–4.ii, 2(a)(15)–5, 2(a)(20)–2.iii, 2(a)(20)–4.ii, 4(a)–4.iv, 4(b)(2)–1.ii through iv, 4(c)(3)–1, 5(b)(2)(ii)–4, 8(b)–1.vi, 10(a)–2.ii, 12(c)(1)–1.i, 12(d)(3)–3, 13(a)(3)–2.ii, 13(i)–1, 52(a)(2)–3, 52(b)(2)(i)–7, 57(a)(1)–1, 57(a)(5)–1, 57(b)–3, 57(c)–7, and 60(b)(8)–5. The final rule does not adopt the proposed changes to these provisions related to these account numbers.

[601] The proposal would have made changes to existing § 1005.10(e)(1) and comments 10(e)(1)–2 and –3 and added proposed § 1005.18(g)(1) and comments 18(g)–1 and –2 related to these account numbers. The final rule does not adopt the proposed provisions related to these account numbers.

[602] Proposed § 1026.2(a)(15)(iv) would have defined 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.'' The proposed definition of ''debit card'' also would have specified that it does not include a prepaid card.

where the account number is a prepaid card that is a credit card.

The Bureau did not receive specific comments on the proposed changes to existing § 1026.2(a)(15)(ii) and related commentary. The Bureau is revising existing § 1026.2(a)(15)(ii) and existing comment 2(a)(15)–4 as proposed with revisions consistent with § 1026.61.[603] Consistent with the proposal, the Bureau is revising existing § 1026.2(a)(15)(ii)(B) to only include the exception for overdraft lines of credit accessed by a debit card. Consistent with the proposal, the Bureau is defining ''debit card'' in new § 1026.2(a)(15)(iv) to exclude a prepaid card.[604] Thus, under the final rule, the exception in final § 1026.2(a)(15)(ii)(B) does not apply to overdraft lines of credit that are accessible by a hybrid prepaid-credit card as that term is defined in new § 1026.61. In addition, consistent with the proposal, the Bureau is moving the exception for overdraft lines of credit that are accessed by account numbers from existing § 1026.2(a)(15)(ii)(B) to new § 1026.2(a)(15)(ii)(C) and is revising that provision. The Bureau is amending new § 1026.2(a)(15)(ii)(C) and existing comment 2(a)(15)–4 to provide that the exception does not apply to a covered separate credit feature accessible by an account number where the account number is a hybrid prepaid-credit card as defined in new § 1026.61. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

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 existing § 1026.2(a)(20), that is not home-secured and the open-end (not home-secured) credit plan must be accessible by a ''credit card,'' as defined in final § 1026.2(a)(15)(i). As discussed in the section-by-section analysis of § 1026.2(a)(20) below, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of ''open-end credit'' and that credit will not be home-secured.[605] In addition, under the final rule, a prepaid card that is a hybrid prepaid-credit card as discussed in new § 1026.61 is a credit card under Regulation Z with respect to the covered separate credit feature. Thus, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of ''credit card account under an open-end (not home-secured) consumer credit plan'' in final § 1026.2(a)(15)(ii).[606] These covered separate credit features will be subject to the disclosure and credit card provisions set forth in subpart B and G.

2(a)(15)(iii) Charge Card

Regulation Z defines the term ''charge card'' in existing § 1026.2(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, in general, 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 existing §§ 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 1026.60, and Appendices G–10 through G–13. See also the discussion in the section-by-section analysis of § 1026.2(a)(20) below relating to charge card accounts as open-end credit.

The proposal would have revised existing 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 have been placed in proposed comment 2(a)(15)–3.i and a new comment 2(a)(15)–3.ii would have been added. Specifically, proposed comment 2(a)(15)–3.ii would have explained 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. This proposed comment also would have explained that, unlike other charge cards, a prepaid card that is a charge card that accesses a credit card account under an open-end (not home-secured) consumer credit plan would be subject to the requirements in proposed § 1026.7(b)(11)(i)(A), which would have required payment due dates to be disclosed on periodic statements for a credit card account under an open-end (not home-secured) consumer credit plan. See the section-by-section analysis of § 1026.7(b)(11) below. Thus, under proposed § 1026.5(b)(2)(ii)(A), for credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer of a prepaid card that meets the definition of a charge card would have been required to adopt reasonable procedures designed to ensure that (1) periodic statements for the charge card account accessed by the prepaid card that is a charge card are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to proposed § 1026.7(b)(11)(i)(A); and (2) the card issuer does not treat as late for any purposes a required minimum periodic payment on the charge card account 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 have been renumbered as proposed comment 2(a)(15)–3.i) would have been revised to be consistent with new proposed comment 2(a)(15)–3.ii and the definition of ''charge card.''

[603] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Thus, under proposed § 1026.2(a)(15)(ii)(C) and proposed comment 2(a)(15)–4, the exception in proposed § 1026.2(a)(15)(ii)(C) would not have applied to credit plans that would have been accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.2(a)(15)(ii)(C) and comment 2(a)(15)–4 related to these account numbers.

[604] Consistent with the proposal, new § 1026.2(a)(15)(iv) defines 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 as defined in § 1026.61.'' The definition of ''debit card'' specifies that it does not include a prepaid card as defined in § 1026.61.

[605] As discussed in more detail below in the section-by-section analysis of § 1026.2(a)(17), a person is not a creditor that is extending open-end credit where the person offers a covered separate credit feature accessible by a hybrid prepaid-credit card and a finance charge is not imposed in connection with the credit. Nonetheless, as discussed in the section-by-section analysis of § 1026.2(a)(17), such a person would still be subject to certain Regulation Z requirements under certain circumstances.

[606] The Bureau plans to monitor the development of covered separate credit features accessible by hybrid prepaid-credit cards after the final rule becomes effective.

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 an outstanding balance cannot be carried from one billing cycle to another and is payable when a periodic statement is received. This sentence would have been revised to be more consistent with the definition of charge card in existing § 1026.2(a)(15)(iii) to state that charge cards are credit cards where no periodic rate is used to compute the finance charge; no substantive change would have been intended by this proposed revision. In addition, the last sentence of the existing comment would have been revised to cross-reference new proposed comment 2(a)(15)–3.ii.

The Bureau did not receive specific comments on the proposed changes to comment 2(a)(15)–3. Consistent with the proposal, the final rule places the language of current comment 2(a)(15)–3 in new comment 2(a)(15)–3.i and revises that language as proposed. The Bureau also is adding a new comment 2(a)(15)–3.ii as proposed, with revisions to clarify the intent of the language and to be consistent with new § 1026.61.[607]

Specifically, new comment 2(a)(15)–3.ii provides that a hybrid prepaid-credit card, as defined in new § 1026.61, is a charge card with respect to a covered separate credit feature if no periodic rate is used to compute the finance charge in connection with the covered separate credit feature. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New comment 2(a)(15)–3.ii also explains that, unlike other charge card accounts, the requirements in final § 1026.7(b)(11) apply to a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card when that covered separate credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, under final § 1026.5(b)(2)(ii)(A), with respect to a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer of a hybrid prepaid-credit card that meets the definition of a charge card because no periodic rate is used to compute a finance charge in connection with the covered separate credit feature must adopt reasonable procedures for the covered separate credit feature 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 final § 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.

2(a)(15)(iv) Debit Card

Although current Regulation Z and its commentary use the term ''debit card,'' that term is not defined. Generally, under existing comment 2(a)(15)–2.i.B, the term ''debit card'' refers to a card that accesses an asset account. Specifically, existing 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, existing 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.

Under the proposal, different rules generally would have applied in Regulation Z depending on whether credit is accessed by a card or device that accesses a prepaid account (which would have been defined in proposed § 1026.2(a)(15)(vi) to match the definition under proposed Regulation E § 1005.2(b)(3)) or a card or device that accesses another type of asset account. To assist compliance with the regulation, the proposal would have defined ''debit card'' for purposes of Regulation Z in proposed § 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 have specified that it does not include a prepaid card. Proposed § 1026.2(a)(15)(v) would have defined ''prepaid card'' to mean ''any card, code, or other device that can be used to access a prepaid account'' and would have defined ''prepaid account'' in proposed § 1026.2(a)(15)(vi) to mean a prepaid account as defined in proposed Regulation E § 1005.2(b)(3). Proposed comment 2(a)(15)–6 would have provided that the term ''prepaid card'' in proposed § 1026.2(a)(15)(v) would have included 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 would have provided 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 Bureau did not receive specific comment on the proposed definition of ''debit card.'' The Bureau is adopting the definition of ''debit card'' in new § 1026.2(a)(15)(iv) as proposed with one technical revision to cross-reference the definition of ''prepaid account'' in new § 1026.61.[608] In addition, the Bureau is adopting the definitions of ''prepaid account'' and ''prepaid card'' as proposed, renumbered as new § 1026.61(a)(5)(v) and new § 1026.61(a)(5)(vii) respectively. The Bureau also is adopting comment 2(a)(15)–6 with revisions to provide guidance on the definition of ''prepaid card,'' renumbered as new comment 61(a)(5)(vii)–1. See the section-by-section analysis of § 1026.61(a)(5) below for a discussion of the ''prepaid account'' and ''prepaid card'' definitions and related commentary.

2(a)(17) Creditor

Certain disclosure requirements and other requirements in TILA and Regulation Z generally apply to creditors. TILA section 103(g) generally defines the term ''creditor'' to mean a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer 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

[607] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed comment 2(a)(15)–3.ii would have provided that such an account number is a charge card if it accesses a credit card account where no periodic rate is used to compute the finance charge. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 2(a)(15)–3.ii related to these account numbers.

[608] As in the proposal, this definition of ''debit card'' does not apply to Regulation E, including the rules that apply to debit cards that access checking accounts with overdraft services.

indebtedness, by agreement.[609] Also, for purposes of certain disclosure provisions in TILA that relate to account-opening disclosures, and periodic statement disclosures, for open-end credit plans, 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.[610]

Consistent with TILA, Regulation Z generally defines the term ''creditor'' in existing § 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 existing § 1026.2(a)(17)(v) and existing comment 2(a)(17)(i)–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 existing § 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, under existing § 1026.2(a)(17)(iii), 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. Thus, under existing 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 existing § 1026.60.

The Bureau's Proposal

The Bureau's proposal generally would have applied this existing framework to the prepaid context. Thus, under the proposal, a card issuer that issues a prepaid card that is a credit card (or its agent) that extends open-end (not home-secured) credit would have met the general definition of ''creditor'' because the person charges a finance charge and would have been 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. Under existing § 1026.2(a)(17)(iv), a card issuer that issues a prepaid card that is a credit card (or its agent) that extends closed-end (not home-secured) credit would have met the general definition of ''creditor'' where the person charges a finance charge or extends credit payable by written agreement in more than four installments. Such person would have been subject to the closed-end provisions in subpart C and, certain open-end (not home-secured) disclosure rules in subpart B, and the credit card rules in subpart B. A card issuer that issues a prepaid card that is a credit card (or its agent), extends credit (not home-secured), and charges a fee described in § 1026.4(c), but does not charge a finance charge and does not extend credit payable by written agreement in more than four installments, would have been a ''creditor'' under existing § 1026.2(a)(17)(iii) and would have been subject to the open-end (not home-secured) disclosure rules and the credit card rules in subpart B.

Proposed comment 2(a)(15)–2.i.F, however, would have provided that a prepaid card is not a credit card when the prepaid card only accesses credit that (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. The Bureau would have clarified in proposed comment 2(a)(17)(iii)–2 that existing § 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 meets these same three restrictions. In this case, under the proposal, the prepaid card would not have been a credit card and therefore the person issuing the card would not have been a card issuer. Prepaid account issuers that satisfied this exclusion still would have been subject to Regulation E's requirements, such as error resolution, and limits on liability for unauthorized use.

Comments Received and the Final Rule

The Bureau did not receive comment on this aspect of the proposal, other than those related to general comments from industry not to cover overdraft plans offered on prepaid accounts under Regulation Z and instead cover these overdraft plans under existing Regulation E § 1005.17. See the *Overview of the Final Rule's Amendments to Regulation Z* section for a discussion of those comments. As discussed in the section-by-section analysis of § 1026.61 below, the Bureau is revising from the proposal the circumstances in which a prepaid card is a credit card under Regulation Z. Under final § 1026.2(a)(15)(i), a prepaid card is a credit card under Regulation Z when it is a ''hybrid prepaid-credit card'' as defined in new § 1026.61. *See also* new § 1026.61(a), and new comment 2(a)(15)–2.i.F. The Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. Specifically, new § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. The term ''covered separate credit feature'' is defined in new § 1026.61(a)(2)(i) to mean a separate credit feature accessible by a hybrid prepaid-credit card as described in new § 1026.61(a)(2)(i). Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as ''non-covered separate

[609] 15 U.S.C. 1602(g).

[610] *Id.*

credit features,'' as discussed in the section-by-section analysis of § 1026.61(a)(2) below. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

Consistent with the proposal, the Bureau generally applies the existing framework for the definition of ''creditor'' to the prepaid context. Thus, a card issuer of a hybrid prepaid-credit card (or its agent) that extends credit under a covered separate credit feature is a ''creditor'' under existing § 1026.2(a)(17). The card issuer must comply with different provisions in Regulation Z depending on the type of credit extended. Under existing § 1026.2(a)(17)(iii), a card issuer of a hybrid prepaid-credit card (or its agent) that extends open-end (not home-secured) credit (and thus charges a finance charge for the credit) in connection with the covered separate credit feature is a ''creditor'' for purposes of the rules governing open-end (not home-secured) credit plans in subpart B in connection with the covered separate credit feature. The card issuer also must comply with the credit card rules set forth in subparts B and G with respect to the covered separate credit feature and the hybrid prepaid-credit card. Under existing § 1026.2(a)(17)(iii), a card issuer of a hybrid prepaid-credit card (or its agent) that extends credit (not home-secured) through the covered separate credit feature that is not subject to a finance charge and is not payable in more than four installments generally is a ''creditor'' for purposes of the open-end (not home-secured) rules in subpart B with respect to the covered separate credit feature. The card issuer also generally must comply with the credit card rules in subpart B with respect to the covered separate credit feature and the hybrid prepaid-credit card, but generally need not comply with the credit card rules in subpart G, except for the credit card disclosures required by existing § 1026.60 and the provisions in new § 1026.61.[611] Under existing § 1026.2(a)(17)(iv), a card issuer of a hybrid prepaid-credit card (or its agent) that extends closed-end (not home-secured) credit through the covered separate credit feature, and charges a finance charge or extends credit payable by written agreement in more than four installments is a ''creditor'' for purposes of the closed-end provisions in subpart C and certain open-end (not home-secured) disclosure rules in subpart B. The card issuer also generally must comply with the credit card rules in subpart B with respect to the covered separate credit feature and the hybrid prepaid-credit card, but generally need not comply with the credit card rules in subpart G except for the provisions in § 1026.61.

With respect to guidance on the definition of ''creditor'' related to prepaid cards that are not hybrid prepaid-credit cards, the Bureau is revising new comment 2(a)(17)(iii)–2 from the proposal and is adding new comment 2(a)(17)(i)–8 to cross-reference new § 1026.61(a), new comment 61(a)(2)–5.iii and new comment 61(a)(4)–1.iv for guidance on the applicability of Regulation Z to prepaid cards that are not hybrid prepaid-credit cards.

2(a)(20) Open-End Credit

TILA section 103(j) defines the term ''open-end credit plan'' 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.[612] Regulation Z defines the term ''open-end credit'' in existing § 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.

With respect to a credit accessed by a prepaid card that would have been a credit card under the proposal, the proposal would have provided additional guidance on the meaning of the following three terms used in the definition of ''open-end credit:'' (1) ''credit;'' (2) ''plan;'' and (3) ''finance charge.'' For a discussion of the proposal and the final rule related to the term ''credit,'' see the section-by-section analysis of § 1026.2(a)(14) above. The term ''plan'' is discussed below. For a discussion of the proposal and the final rule related to the term ''finance charge,'' see below and the section-by-section analysis of § 1026.4.

Definition of ''Plan''

The Bureau's proposal. The term ''plan'' currently is discussed in current comment 2(a)(20)–2, which provides in relevant part that the term ''plan'' connotes a contractual arrangement between the creditor and the consumer. The proposal would have revised current 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. Under the proposal, a new comment 2(a)(20)–2.ii would have provided 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. The proposal would have provided that 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 have constituted 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.

[611] As discussed in the section-by-section analysis of § 1026.2(a)(15)(ii) above, certain requirements in the Credit CARD Act, which are generally set forth in subpart G, only apply to card issuers offering a credit card account under an open-end (not home-secured) consumer credit plan.

[612] *See* 15 U.S.C. 1602(j).

To accommodate the proposed changes, the proposal also would have made several technical revisions to comment 2(a)(20)–2. Specifically, the first sentence of the existing language in comment 2(a)(20)–2 would have been moved to proposed comment 2(a)(20)–2.i, and the remaining language of the existing comment would have been moved to proposed comment 2(a)(20)–2.iv.

Comments received and the final rule. The Bureau did not receive specific comment on the proposed changes to comment 2(a)(20)–2. Consistent with the proposal, the Bureau is moving the first sentence of the existing language in comment 2(a)(20)–2 to new comment 20(a)(20)–2.i. The Bureau also is moving the remaining language of the existing comment to new comment 2(a)(20)–2.iii.

The Bureau also is modifying the proposed language in new comment 2(a)(20)–2.ii to be consistent with the provisions set forth in § 1026.61.[613] Specifically, the final rule does not adopt an example contained in proposed comment 2(a)(20)–2.ii where credit is accessed by a prepaid card where the credit is extended on the prepaid account as a negative balance. As discussed in the section-by-section analysis of § 1026.61(b) below, a negative balance feature accessible by a prepaid card triggers application of the credit card rules under the final rule for purposes of coverage except as provided in new § 1026.61(a)(4). However, new § 1026.61(b) requires that an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner in connection with a prepaid account (except as provided in new § 1026.61(a)(4)) must be structured as a separate subaccount or account, distinct from the prepaid asset account, in order to facilitate transparency and compliance with various elements of Regulation Z. Such a separate credit feature is defined as a ''covered separate credit feature'' under new § 1026.61(a)(2)(i). Accordingly, the Bureau is revising new comment 20(a)(2)–2.ii from the proposal to discuss a situation where a hybrid prepaid-credit card accesses a ''covered separate credit feature'' under new § 1026.61(a)(2)(i) rather than credit in the form of a negative balance on the asset account that would violate new § 1026.61(b).

Specifically, under the final rule, new comment 2(a)(20)–2.ii provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, a plan includes a program under which a creditor routinely extends credit where the prepaid card can be used from time to time to draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers, and the consumer is obligated contractually to repay those credit transactions. Such a program constitutes a plan notwithstanding that, for example, the creditor has not agreed in writing to extend credit for those transactions, the creditor retains discretion not to extend credit for those transactions, or the creditor does not extend credit for those transactions once the consumer has exceeded a certain amount of credit. The comment also cross-references new § 1026.61(a) and related commentary for guidance on the applicability of this regulation to credit accessible by hybrid prepaid-credit cards.

With respect to the programs described above, the Bureau believes these programs are plans notwithstanding that, for example, 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 covered separate credit features accessible by hybrid prepaid-credit cards does not connote the absence of an open-end credit plan. If consumers using covered separate credit features accessible by hybrid prepaid-credit cards must agree to repay the debt created by an overdraft or advance, 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 overdraft services are comparable.

Finance Charge Imposed From Time to Time on an Outstanding Unpaid Balance

The Bureau's proposal. 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. Existing 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 existing § 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 as 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 have revised various components of the definition of finance charge in existing § 1026.4 and its commentary to (1) distinguish credit provided in connection with prepaid accounts addressed by the proposal from overdraft services on checking accounts, which is subject to a different rulemaking process; and (2) broaden the definition of ''finance charge,'' as applied in the prepaid context, to assure broad coverage of the credit card rules to credit plans accessed by prepaid cards that would have been credit cards under the proposal and to better reflect the full cost of credit. Consistent with this approach, the proposal also would have added proposed comment 2(a)(20)–4.ii to state that with respect to credit accessed by a prepaid card (including a prepaid card that is solely an account number), any service, transaction, activity, or carrying charges imposed on a credit account, and any such charges imposed on a prepaid account related to an extension of credit, carrying a credit balance, or credit availability, generally would be finance charges. Such charges would have included periodic participation fees for the credit plan and transaction charges imposed in connection with a credit extension. In addition, proposed comment 2(a)(20)–4.ii would have provided 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

[613] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed comment 2(a)(20)–2.iii would been added to provide guidance on when depositing credit proceeds into a prepaid account would be considered extending credit under a plan. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt proposed comment 2(a)(20)–2.iii related to these account numbers.

for the plan for which the finance charge, total of payments, and payment schedule can be calculated. The proposal also would have moved the existing language of comment 2(a)(20)–4 to proposed comment 2(a)(20)–4.i.

Comments received and the final rule. The Bureau did not receive specific comments on the proposed changes to existing comment 2(a)(20)–4. Consistent with the general approach in the proposal, the Bureau is revising various components of the definition of finance charge in existing § 1026.4 and its commentary to (1) distinguish credit provided in connection with prepaid accounts addressed by the final rule from overdraft services on checking accounts, which is subject to a different rulemaking process; and (2) broaden the definition of ''finance charge,'' as applied in the prepaid context, to assure broad coverage of the credit card rules to covered separate credit features accessible by hybrid prepaid-credit cards and to better reflect the full cost of credit. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau is adding a new § 1026.4(b)(11) and related commentary to provide guidance as to the application of Regulation Z to covered separate credit features accessible by hybrid prepaid-credit cards. In particular, § 1026.4(b)(11) and related commentary describe how to treat charges that may be imposed on the separate credit subaccount or account as compared to charges that may be imposed on the prepaid asset feature. The commentary to new § 1026.4(b)(11) also provides guidance as to the treatment of fees imposed on the prepaid account in relation to credit features accessible by prepaid cards that are not credit cards under the final rule.

The Bureau is adopting changes to the commentary concerning the prong of the open-end credit definition in existing § 1026.2(a)(20) concerning the creditor's ability to impose finance charges from time to time on an outstanding unpaid balance, consistent with the general approach adopted in final §§ 1026.4 and new 1026.61. Specifically, the Bureau is moving the existing language of comment 2(a)(20)–4 to new comment 2(a)(20)–4.i. The Bureau also is adding new comment 2(a)(20)–4.ii but revises this comment from the proposal to reflect changes from the proposal set forth in the final rule under final §§ 1026.4 and new 1026.61.[614] Specifically, new comment 2(a)(20)–4.ii provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, any service, transaction, activity, or carrying charges imposed on the separate credit feature, and any such charges imposed on the asset feature of the prepaid account to the extent that the amount of the charge exceeds comparable charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit, generally are finance charges, as described in existing § 1026.4(a) and new § 1026.4(b)(11). Such charges include a periodic fee to participate in the covered separate credit feature, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. With respect to credit from a covered separate credit feature, any service, transaction, activity, or carrying charges that are finance charges under final § 1026.4 constitute finance charges imposed from time to time on an outstanding unpaid balance, as described in existing § 1026.2(a)(20), if there is no specific amount financed for the credit feature 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 covered separate credit features accessible by hybrid prepaid-credit cards. Instead, the Bureau anticipates that the credit lines on covered separate credit features generally will be replenishing. In such cases, an amount financed for the credit feature could not be calculated because the creditor will not know at the time the credit feature is established the amount of credit that will be extended. Thus, to the extent that any finance charge may be imposed on such a credit feature, the credit feature will meet this criterion.

The Bureau believes that it is appropriate to consider covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards to meet this criterion of open-end credit. Under the Bureau's interpretation, a finance charge may be imposed time to time on an outstanding unpaid balance when any finance charge (including transaction fees or participation fees that are finance charges) may be imposed on the covered separate credit feature or asset feature of the prepaid account that are both accessible by the hybrid prepaid-credit card. In contrast, if the Bureau were to interpret narrowly the criterion of open-end credit that a finance charge may be imposed time to time on an outstanding unpaid balance and include only finance charges resulting from periodic rates, covered separate credit features accessible by hybrid prepaid-credit cards that are charge card accounts instead would constitute closed-end credit. Under existing § 1026.2(a)(17)(iv), a card issuer offering such a charge card account would be a ''creditor'' for purposes of, and would need to comply with, the closed-end disclosure provisions in subpart C as well as certain open-end (not home-secured) disclosures rules in subpart B.

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 those disclosures received in connection with other open-end credit card accounts. Where the transactions otherwise would appear to be part of 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 a covered separate credit feature accessible by a hybrid prepaid-credit card where that credit feature is a charge card account, 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 is retaining the current interpretation in existing comment 2(a)(20)–4 that a finance charge is considered to be imposed from time to time on an outstanding unpaid balance, as

[614] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed comment 2(a)(20)–4.ii would been added to provide guidance on when finance charges imposed on credit accounts accessed by those account numbers would have satisfied the requirement for ''open-end credit'' that the creditor may impose a ''finance charge'' from time to time on an outstanding unpaid balance. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 2(a)(20)–4.ii related to these account numbers.

described in existing § 1026.2(a)(20), if there is no specific amount financed for the credit feature for which the finance charge, total of payments, and payment schedule can be calculated. This means that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of ''open-end credit'' if any finance charge may be imposed on the covered separate credit feature or asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card.

The Bureau also notes that persons that offer covered separate credit features accessible by hybrid prepaid-credit cards where no finance charge may be imposed on the covered separate credit feature or asset feature of the prepaid account that are both accessible by the hybrid prepaid-credit card still would be subject to certain Regulation Z provisions. See the section-by-section analysis of § 1026.2(a)(17) above.

Section 1026.4 Finance Charge

TILA section 106(a) provides generally that the term ''finance charge'' in connection with any consumer credit transaction is 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.[615]

Regulation Z generally defines the term ''finance charge'' in existing § 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 as 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 as described in existing § 1026.4(c)(3) and (4) respectively: (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.

As discussed in more detail below, the proposal would have revised various components of the definition of finance charge in existing § 1026.4 and its commentary as applied to credit offered in connection with a prepaid account to (1) distinguish credit provided in connection with prepaid accounts addressed by the proposal from overdraft services on checking accounts, which is subject to a different rulemaking; and (2) broaden the definition of ''finance charge,'' as applied in the prepaid context, to assure broad coverage of the credit card rules to credit plans accessed by prepaid cards that would have been credit cards under the proposal and to better reflect the full cost of credit.

Specifically, the proposal would have provided that existing § 1026.4(c)(3)'s exclusion of fees imposed in connection with overdraft services on checking accounts from the definition of finance charge would not have applied to credit accessed by a prepaid card. It also would have exempted credit accessed by a prepaid card from the exclusion in existing § 1026.4(c)(4) for participation fees. As discussed in more detail in the section-by-section analyses of § 1026.4(a) and (b) below, the proposal also would have made other modifications to general finance charge precepts as applied to credit offered in connection with prepaid cards, to assure broad coverage of the credit card rules to such credit.

As discussed in more detail below, consistent with the goals of the proposal in relation to the definition of ''finance charge,'' the Bureau is revising the definition of ''finance charge'' with regard to the covered separate credit features accessible by hybrid prepaid-credit cards as defined under new § 1026.61 to (1) distinguish credit provided in connection with prepaid accounts addressed by the final rule from overdraft services on checking accounts, which is subject to a different rulemaking process; and (2) broaden the definition of ''finance charge,'' as applied in the prepaid context, to assure broad coverage of the credit card rules to covered separate credit features accessible by hybrid prepaid-credit cards and to better reflect the full cost of credit. The Bureau also is adding language to the definition of ''finance charge'' in existing § 1026.4 and related commentary to provide greater guidance regarding the treatment of fees that are charged to the separate credit subaccount or account accessible by a hybrid prepaid-credit card, as compared to fees charged to the prepaid asset feature. Finally, the Bureau has added commentary to § 1026.4 to provide guidance as to the application of the definition of ''finance charge'' to credit features accessible by prepaid cards that are not credit cards under the final rule.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to such a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a ''covered separate credit feature.'' The hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as ''non-covered separate credit features,'' as discussed in the section-by-section analysis of § 1026.61(a)(2) below. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-

[615] 15 U.S.C. 1605(a).

credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

As discussed in more detail below, the Bureau is amending existing § 1026.4 and its commentary to (1) distinguish credit provided in connection with prepaid accounts addressed by the final rule from the overdraft services on checking accounts, which is subject to a different rulemaking process; and (2) broaden the definition of ''finance charge,'' as applied in the prepaid context, to assure broad coverage of the credit card rules to covered separate credit features accessible by hybrid prepaid-credit cards and to better reflect the full cost of credit. Specifically, the final rule provides that the exclusion in existing § 1026.4(c)(3) for certain charges in connection with overdraft services on checking accounts does not apply to credit offered in connection with a prepaid account and that the exclusion in existing § 1026.4(c)(4) for participation fees does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.

In addition, the Bureau is amending existing § 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 offered in connection with a prepaid account. For example, with regard to covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau has added new § 1026.4(b)(11) and related commentary to address the classification of fees as finance charges depending on whether those fees are imposed on the covered separate credit feature or on the asset feature of the prepaid account. Specifically, new § 1026.4(b)(11) provides that the following fees generally are finance charges with respect to such covered separate credit features and asset features: (1) Any fee or charge, such as interest rates and service, transaction, activity, or carrying charges, imposed on the covered separate credit feature, whether it is structured as a credit subaccount of the prepaid account or a separate credit account; and (2) any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

The commentary to new § 1026.4(b)(11) also provides guidance with regard to the treatment of fees imposed on the prepaid account in relation to credit features accessible by prepaid cards that are not hybrid prepaid-credit cards. For example, with regard to non-covered separate credit features, the final rule provides that new § 1026.4(b)(11) and related commentary do not apply to fees or charges imposed on the non-covered separate credit feature; instead, the non-covered credit feature is evaluated in its own right under the general rules set forth in existing § 1026.4 to determine whether these fees or charges are finance charges. In addition, with respect to these non-covered separate credit features, fees or charges on the asset feature of the prepaid account are not finance charges under existing § 1026.4 with respect to the non-covered separate credit feature. The commentary also provides that with respect to incidental credit that is provided via a negative balance on the prepaid account under new § 1026.61(a)(4), fees that can be imposed on the prepaid account under § 1026.61(a)(4) are not finance charges under final § 1026.4.

4(a) Definition

Under Regulation Z, the term ''finance charge'' generally is defined in existing § 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 as a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

With regard to credit card accounts, generally all transaction fees imposed on the account are treated as finance charges, even if the creditor imposes comparable transaction fees on asset accounts. Existing comment 4(a)–4 provides guidance on when transaction charges imposed on credit card accounts are finance charges under existing § 1026.4(a). (Transaction charges that are imposed on checking accounts or other transaction accounts are discussed in the section-by-section analyses of § 1026.4(b) and (b)(11) below.) Specifically, existing 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.

The proposal would have added proposed comment 4(a)–4.iii to provide that 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.

The Bureau received substantial comment on the circumstances in which fees imposed on a prepaid account should be considered finance charges under § 1026.4. These comments are discussed in the section-by-section analysis of § 1026.4(b)(11) below. As discussed in the section-by-section analysis of § 1026.4(b)(11), new § 1026.4(b)(11) and related commentary set forth guidance regarding the circumstances in which a fee is a finance charge for credit offered in connection with a prepaid account. Thus, the Bureau is not revising existing comment 4(a)–4 to include the proposed prepaid card example discussed above.[616] Instead, the final rule revises

[616] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed comment 4(a)–4 would have been revised to provide that any transaction charge imposed on a cardholder by a card issuer for credit accessed by such an account number 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 the reasons set forth in the section-by-

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existing comment 4(a)–4 to provide that comment does not apply to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61. The comment also is revised to cross-reference new §§ 1026.4(b)(11) and 1026.61 for guidance on the circumstances in which a fee is a finance charge in connection with a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card.

4(b) Examples of Finance Charges

4(b)(2)

Existing § 1026.4(b) provides examples of the types of charges that are finance charges, except if those charges are specifically excluded under existing § 1026.4(c) through (e). In particular, existing § 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 any charge imposed on a checking or other transaction account, such a 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. Existing 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 existing § 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 existing § 1026.4(b)(2). For purposes of existing § 1026.4(b)(2), a per transaction fee imposed on a checking account with a credit feature (*i.e.,* overdraft line of credit where the financial institution has agreed in writing to pay an overdraft) can be compared with a fee imposed for paying or returning each item on a similar account without a credit feature. Thus, if a per transaction fee imposed on a checking account with a credit feature for accessing credit does not exceed the fee for paying an overdraft or NSF fee on the checking account with no credit feature, the per transaction fee imposed on the checking account with the credit feature is not a finance charge under existing § 1026.4(b)(2).

The proposal would have set forth a different rule for when fees imposed on prepaid accounts would have been finance charges than the standard set forth in existing § 1026.4(b)(2). Specifically, proposed § 1026.4(b)(2)(ii) would have provided that any charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability would have been a finance charge where that fee is imposed on a prepaid account in connection with credit accessed by a prepaid card, 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. Proposed comment 4(b)(2)–1.ii through iv, would have clarified the rule set forth in proposed § 1026.4(b)(2)(ii). The existing language in § 1026.4(b)(2) would have been moved to proposed § 1026.4(b)(2)(i). The existing language in comment 4(b)(2)–1 would have been moved to proposed comment 4(b)(2)–1.i.

The Bureau received substantial comments on the circumstances in which fees imposed on prepaid accounts should be considered finance charges under § 1026.4. These comments are discussed in the section-by-section to § 1026.4(b)(11) below. As discussed in the section-by-section analysis of § 1026.4(b)(11), new § 1026.4(b)(11) and related commentary set forth guidance regarding the circumstances in which a fee is a finance charge for credit offered in connection with a prepaid account. Thus, the Bureau has not adopted proposed § 1026.4(b)(2)(ii) and the changes to comment 4(b)(2)–1 as proposed.[617] Instead, the Bureau is revising § 1026.4(b)(2) and comment 4(b)(2)–1 to provide that final § 1026.4(b)(2) does not apply to prepaid accounts as defined in § 1026.61. In addition, the Bureau is adding new comment 4(b)(2)–2 to state that fees or charges related to credit offered in connection with prepaid accounts as defined in § 1026.61 are discussed in new §§ 1026.4(b)(11) and 1026.61, and related commentary.

4(b)(11)

The Bureau's Proposal

As discussed in the section-by-section analyses of § 1026.4(a) and (b)(2) above, the Bureau proposed § 1026.4(b)(2) and comments 4(a)–4.iii and 4(b)(2)–1.ii through iv to provide guidance regarding when a fee imposed in relation to credit accessed by a prepaid card would have been a finance charge under § 1026.4.

Proposed comment 4(a)–4.iii would have set forth guidance on when transaction fees imposed on credit card accounts accessed by prepaid cards would have been considered finance charges under the proposal. Specifically, this comment would have provided that 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.

Proposed § 1026.4(b)(2)(ii) and proposed comment 4(b)(2)–1.ii through iv would have provided guidance on when service, transaction, activity, and carrying charges imposed on a prepaid account in connection with credit accessed by a prepaid card would have been a finance charge under the proposal. Specifically, proposed § 1026.4(b)(2)(ii) would have provided that any charge imposed on the prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability would have been a finance charge where that fee is imposed on a prepaid account in connection with credit accessed by a prepaid card, 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.

Under proposed comment 4(b)(2)–1.ii, transaction fees imposed on a prepaid account for credit extensions would have been finance charges, regardless of whether the creditor imposes the same, greater, or lesser per transaction fee to withdraw funds from the prepaid account. To illustrate, 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

section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 4(a)–4 related to these account numbers.

[617] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed § 1026.4(b)(2)(ii) and comment 4(b)(2)–1.ii through iv would have set forth the rule for when a fee imposed on a prepaid account is a finance charge in connection with credit accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.4(b)(2)(ii) and comment 4(b)(2)–1.ii through iv related to these account numbers.

transaction is paid. Under the proposal, the $1.50 transaction charge would have been 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 addition, under proposed comment 4(b)(2)–1.ii, a fee imposed on the prepaid account for the availability of an open-end plan that is accessed by a prepaid card would have been a finance charge regardless of whether the creditor imposes the same, greater, or lesser monthly service charge to hold the prepaid account. For example, assume a creditor imposes $5 monthly service charge on the prepaid account for the availability of an open-end plan that is accessed by a prepaid card. Under the proposal, the $5 monthly service charge would have been a finance charge regardless of whether the creditor imposes the same, greater, or lesser monthly service charge to hold the prepaid account.

In the proposal, the Bureau recognized that if a prepaid account issuer imposes a per transaction fee on a prepaid account for any transactions authorized or settled on the prepaid account, the prepaid account issuer would need to waive that per transaction fee imposed on the prepaid account when the transaction accesses credit to take advantage of the exception for when a prepaid card would not be a credit card under the proposal.

Proposed comment 4(b)(2)–1.iii would have provided 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 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 have provided that proposed § 1026.4(b)(2)(ii) would not apply to: (1) 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); (2) fees for opening or holding the prepaid account; and (3) 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 have been 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 were not sufficient funds in the prepaid account to pay the fees at the time they were imposed on the prepaid account. Nonetheless, under the proposal, any negative balance on the prepaid account, whether from fees or other transactions, would have been a credit extension, and if a fee were imposed for such credit extension, the fee would have been a finance charge under proposed § 1026.4(b)(2)(ii). For example, if a cash-reload fee were imposed on the prepaid account and an additional charge were imposed on the prepaid account for a credit extension because there were not sufficient funds in the prepaid account to pay the cash reload fee when it was imposed on the prepaid account, the additional charge would have been a transaction charge imposed on a prepaid account in connection with an extension of credit and would have been a finance charge under proposed § 1026.4(b)(2)(ii).

The Bureau received substantial comment on the circumstances in which fees imposed in connection with credit accessed by a prepaid card should be considered finance charges under § 1026.4. As discussed below, in response to comments received, the Bureau is revising substantially from the proposal the circumstances in which a fee or charge imposed with respect to credit extended in connection with a prepaid account is a finance charge under § 1026.4.

Comments Received

Many industry commenters raised concerns regarding the breadth of fees that would be considered finance charges under the proposal. Many industry commenters were concerned that even though they did not intend to offer credit in connection with the prepaid account, credit could result in certain circumstances, such as forced pay-transactions as discussed in the section-by-section analysis of § 1026.61 below. Because this credit could be extended, many commenters were concerned that fees that generally applied to the prepaid account, but were not specific to the overdraft credit, could be finance charges under the proposal and thus would subject the prepaid account issuer to the credit card rules under Regulation Z. These commenters were concerned that they could not charge certain fees on the prepaid account, or would have to waive certain fees, for the prepaid card not to be considered to be a credit card under the proposal. In particular, proposed comment 2(a)(15)–2.i.F would have provided 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 for when the 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. Under the proposal, for a prepaid card not to be a credit card when it accesses a credit plan, the credit accessed by the prepaid card could not be subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and any credit accessed could not be payable by written agreement in more than four installments.

Many industry commenters indicated that certain fees should not be considered finance charges in connection with credit accessed by a prepaid card, and thus, a prepaid account issuer could continue to charge these fees on the prepaid account without the prepaid card becoming a credit card under the proposal.

For example, several commenters, including an industry trade association, an issuing bank, a program manager, and a digital wallet provider, indicated that consistent with existing § 1026.4(b)(2), a fee that is imposed on a prepaid account in both credit and cash transactions should not be a finance charge when the fee is imposed on a prepaid account. They argued that these fees are exempt from the definition of finance charge under the ''comparable cash transaction'' exception. Existing § 1026.4(b)(2) provides that examples of finance charges generally include service, transaction, activity, and carrying charges. However, existing § 1026.4(b)(2) contains a partial exception to this example stating that for any charge imposed on a checking or other transaction account, such a 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.

In addition, several commenters, including an industry trade association, an issuing bank, a program manager,

and a digital wallet provider, indicated that the term ''finance charge'' should not include per transaction fees charged on a prepaid account for an extension of credit that are the same amount as the fee that would be charged for transactions paid entirely with funds available in the prepaid account. These industry commenters were concerned that a prepaid account issuer would need to waive per transaction fees charged for credit extensions even if they were the same amount as the fee charged for transactions it paid entirely with funds available in the prepaid account to avoid charging a finance charge under the proposal. As discussed above, under the proposal, all per transaction fees for credit transactions were finance charges. Thus, under the proposal, a prepaid account issuer would need to waive per transaction fees imposed on the prepaid account for credit transactions for the prepaid card not to be a credit card under the proposal.

Two industry trade associations indicated that the term ''finance charge'' should only include fees or charges arising from the fact that the transaction is an overdraft and specifically exclude other fees or charges that are wholly unrelated to the fact that the transaction is an overdraft, such as a fee for a balance inquiry at an ATM. These two commenters argued that such unrelated fees or charges should not be ''finance charges'' even if they are imposed when the prepaid account balance is negative. Another industry trade association indicated that a monthly fee to hold the prepaid account should not be a ''finance charge'' simply because it may be imposed when the balance on the prepaid account is negative or because negative balances can occur on the prepaid account.

Several consumer groups commented on this aspect of the proposal. One consumer group commenter indicated that per transaction fees for credit extensions imposed on prepaid accounts should be finance charges even if they are the same amount as the fee charged for transactions paid entirely with funds available in the prepaid account. This consumer group commenter indicated that if a prepaid account issuer wanted to avoid charging a finance charge on the prepaid account, the cleanest solution is the one the Bureau proposed: Simply waive the fee. Another consumer group commenter indicated that any fee or charge that occurs when credit is accessed should be considered a finance charge.

The Final Rule

The Bureau is amending existing § 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 offered in connection with a prepaid account. First, the Bureau provides guidance on the definition of finance charge in relation to covered separate credit features accessible by a hybrid prepaid-credit cards. Second, the Bureau also provides guidance on the definition of finance charge in relation to credit features accessible by prepaid cards that are not hybrid prepaid-credit cards. Starting with the first category, as described above, the Bureau generally intends the final rule to regulate prepaid cards as credit cards when they can access overdraft credit features offered by the prepaid account issuer, its affiliates, or its business partners (except as provided in new § 1026.61(a)(4)). Such credit features are generally required under new § 1026.61(b) to be structured as a separate subaccount or account, distinct from the prepaid asset account, to facilitate transparency and compliance with Regulation Z. To effectuate this decision and provide compliance guidance to industry, new § 1026.4(b)(11) and its related commentary specify rules for distinguishing when particular types of fees or charges that are imposed on the covered separate credit feature or on the asset feature on a prepaid account, which are both accessible by a hybrid prepaid-credit card, are finance charges under Regulation Z. Specifically, new § 1026.4(b)(11) provides that the following fees generally are finance charges with respect to such covered separate credit features and asset features: (1) Any fee or charge, such as interest rates and service, transaction, activity, or carrying charges, imposed on the covered separate credit feature, regardless of whether the credit feature is structured as a credit subaccount of the prepaid account or a separate credit account; and (2) any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. These provisions are discussed in more detail in the section-by-section analyses of § 1026.4(b)(11)(i) and (ii).

The commentary to new § 1026.4(b)(11) also provides guidance regarding credit features that are accessible by prepaid cards that are not credit cards under the final rule. As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

New comment 4(b)(11)–1.i provides that the rules for classification of fees or charges as finance charges in connection with a covered separate credit feature and the asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card are specified in § 1026.4(b)(11) and related commentary. This guidance is discussed in more detail in the section-by-section analyses of § 1026.4(b)(11)(i) and (ii). As discussed in more detail below, new comment 4(b)(11)–1.ii and iii sets forth guidance on when fee or charges are finance charges under § 1026.4 when these fees or charges are imposed in connection with credit features that are accessible by prepaid cards that are not credit cards.[618]

[618] One industry commenter noted the proposed definition of ''finance charge'' in connection with prepaid accounts and raised questions about the impact these proposed changes would have in terms of obligations to notify consumers of adverse actions under the Equal Credit Opportunity Act and Regulation B. The Bureau believes that it has addressed these concerns in the final rule by providing additional guidance on the type of fees that are ''finance charges'' with respect to covered separate credit features accessible by hybrid prepaid-credit cards. In addition, the final rule also excludes prepaid cards from being covered as credit cards under Regulation Z when they access non-covered separate credit features as defined in new § 1026.61(a)(2)(ii), or access incidental credit as a

Non-covered separate credit features. With respect to separate credit features, as noted above, under § 1026.61(a)(2)(ii), there are two circumstances in which new § 1026.61 provides that a prepaid card is not a hybrid prepaid-credit card when it accesses a separate credit feature. The first is where the prepaid card cannot be used to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second is where the separate credit feature is offered by an unrelated third party, rather than the prepaid account issuer, its affiliate, or its business partner.

New § 1026.61(a)(2)(ii) defines a separate credit feature that does not meet these two conditions as a ''non-covered separate credit feature.'' As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z in its own right, depending on the terms and conditions of the product.

New comment 4(b)(11)–1.ii provides that new § 1026.4(b)(11) and related commentary do not apply to fees or charges imposed on the non-covered separate credit feature; instead, the general rules set forth in existing § 1026.4 determine whether these fees or charges are finance charges. In addition, fees or charges on the asset feature of the prepaid account are not finance charges under final § 1026.4 with respect to the non-covered separate credit feature.

Overdraft credit features excepted under § 1026.61(a)(4). As described in new § 1026.61(a)(4), a prepaid card is not a hybrid prepaid-credit card (and is not a credit card under Regulation Z) where the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. Specifically, under this exception, the prepaid account issuer (1) must have a general policy and practice of declining to authorize transactions made with the card where there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transactions or to only authorize such negative balance transactions in circumstances related to payment cushions and delayed load cushions; and (2) must not charge any credit-related fees as defined in new § 1026.61(a)(4) for any credit extended through a negative balance on the asset feature of the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(4) below, such credit features will not trigger coverage of the credit card rules.

With respect to what ''credit-related fees'' will cause such a credit feature to fall outside the scope of the new § 1026.61(a)(4) exclusion, new § 1026.61(a)(4)(ii)(B) provides that with respect to prepaid accounts that are accessible by the prepaid card, the prepaid account issuer may not charge the following fees or charges on the asset feature of the prepaid account: (1) Any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. This would not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available; (2) any fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature, except that a prepaid account issuer may impose fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law; or (3) any fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

This language in new § 1026.61(a)(4)(ii)(B) allows a prepaid account issuer to qualify for the exception in new § 1026.61(a)(4) even if it charges transaction fees on the asset feature of the prepaid account for overdrafts so long as the amount of the per transaction fee does not exceed the amount of the per transaction fee imposed for transactions conducted entirely with funds available in the asset feature of a prepaid account. New § 1026.61(a)(4)(ii)(C) also makes clear that a prepaid account issuer may still satisfy the exception in new § 1026.61(a)(4) even if it debits fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in new § 1026.61(a)(4)(ii)(B) as discussed above.

Thus, in order to qualify for the exception in new § 1026.61(a)(4), a prepaid account issuer generally may not charge additional fees or higher fees when credit is extended on the asset feature of the prepaid account or there is a negative balance on the asset feature of the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law. Provided it meets this limitation and the other requirements of new § 1026.61(a)(4), the prepaid account issuer will not be a ''card issuer'' under final § 1026.2(a)(7) and thus the credit card rules in Regulation Z do not apply to such a credit feature.

In addition, new comment 4(b)(11)–1.iii provides that fees charged on the asset feature of the prepaid account in accordance with new § 1026.61(a)(4)(ii)(B) are not finance charges. This ensures that a prepaid account issuer is not a ''creditor'' under the general definition of ''creditor'' set forth in existing § 1026.2(a)(17)(i) as a result of charging these fees on the prepaid account.

The Bureau believes that many of the concerns raised by industry commenters as discussed above with respect to the definition of ''finance charge'' have been addressed by creating new § 1026.61(a)(4) and its treatment of credit-related charges in new § 1026.61(a)(4)(ii)(B) and new comment 4(b)(11)–1.iii. As discussed above, many industry commenters were concerned that even though they did not intend to offer credit in connection with the prepaid account, credit could result in certain circumstances, such as force pay transactions as discussed in the section-by-section analysis of § 1026.61 below. Because this credit could be extended, many commenters were concerned that fees that generally applied to the prepaid account, but were not specific to the overdraft credit, could be finance charges under the proposal and thus would subject the prepaid account issuer to the credit card rules under Regulation Z. Because of these concerns, many industry commenters urged that that the Bureau not consider certain fees to be finance charges, and thus, a prepaid account issuer could continue to charge these fees on the prepaid account without making the prepaid card also a credit card under the proposal.

For example, several commenters, including an industry trade association, an issuing bank, a program manager, and a digital wallet provider, indicated

negative balance on the prepaid account as set forth in new § 1026.61(a)(4).

that the term ''finance charge'' should not include per transaction fees charged on a prepaid account for an extension of credit that are the same amount as the fee that would be charged for transactions paid entirely with funds available in the prepaid account. These industry commenters also were concerned that if they generally charged the same per transaction fee for all transactions paid using a prepaid account, regardless of whether the transaction is paid entirely with funds available in the prepaid account or is paid in whole or in part with credit, a prepaid account issuer would need to waive those per transaction fees for transactions resulting in an overdraft for a prepaid card not to be a credit card under the proposal. Also, two industry trade associations indicated that the term ''finance charge'' should only include fees or charges arising from the fact that the transaction is an overdraft and specifically exclude other fees or charges that are wholly unrelated to the fact that the transaction is an overdraft, such as a fee for a balance inquiry at an ATM. These two commenters argued that such unrelated fees or charges should not be ''finance charges'' even if they are imposed when the prepaid account balance is negative. Another industry trade association indicated that a monthly fee to hold the prepaid account should not be a ''finance charge'' simply because it may be imposed when the balance on the prepaid account is negative or because negative balances can occur on the prepaid account.

The final rule addresses these concerns in a number of ways, so long as the types of credit provided are limited to the narrow types addressed in new § 1026.61(a)(4). First, new § 1026.61(a)(4) does not require a prepaid account issuer to waive per transaction fees imposed on the asset feature of the prepaid account if the amount of the per transaction fee imposed for transactions involving credit is not higher than the amount of the fee that is imposed for transactions that only access funds in the asset feature of the prepaid account. Second, under the exception in new § 1026.61(a)(4), the final rule provides that if a fee is not a fee enumerated in new § 1026.61(a)(4)(ii)(B), the prepaid account issuer may still debit these fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed. Third, the final rule clarifies that under this exception, a prepaid account issuer may charge a fee to hold the prepaid account, so long as the amount of the fee or charge imposed on the asset feature of the prepaid account is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available.

In addition, as discussed above, new comment 4(b)(11)–1.iii provides that fees charged on the asset feature of the prepaid account in accordance with new § 1026.61(a)(4)(ii)(B) are not finance charges. This ensures that a prepaid account issuer is not a ''creditor'' under the general definition of ''creditor'' set forth in existing § 1026.2(a)(17)(i) as a result of charging these fees on the prepaid account.

4(b)(11)(i)

New § 1026.4(b)(11)(i) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, any fee or charge described in final § 1026.4(b)(1) through (10) imposed on the covered separate credit feature is a finance charge, regardless of whether the separate credit feature is structured as a credit subaccount of the prepaid account or a separate credit account. Fees would be excluded from the definition of finance charge if they are described in final § 1026.4(c) through (e), as applicable, although as discussed in more detail below, the Bureau is narrowing certain of these existing exclusions as they are applied to credit in connection with prepaid accounts. This approach is similar to the approach to the definition of ''finance charge'' that currently applies to credit card accounts generally, except the Bureau is narrowing certain exclusions contained in § 1026.4(c)(3) and (4) as discussed in the section-by-section analysis of § 1026.4(c) below.

Comment 4(b)(11)(i)–1 provides further guidance on this framework. Specifically, it provides that any transaction charge imposed on a cardholder by a card issuer on a covered separate credit feature accessible by a hybrid prepaid-credit card is a finance charge. This comment also provides that transaction charges that are imposed on the asset feature of a prepaid account are subject to new § 1026.4(b)(11)(ii) and related commentary, instead of new § 1026.4(b)(11)(i).

New comment 4(b)(11)(i)–1 also clarifies that the treatment of transaction fees on the separate covered credit feature is consistent with the treatment of transaction fees on a credit card account, as specified in existing comment 4(a)–4. As discussed in more detail in the section-by-section analysis of § 1026.4(a) above, existing comment 4(a)–4 provides guidance on when transaction charges imposed on credit card accounts are finance charges under § 1026.4(a).[619] Specifically, existing 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 distinguishing transactions that are ''comparable cash transactions'' to credit card transactions from transactions that are not.[620] For example, the Board discussed the case where a card issuer imposes a transaction fee on the credit card account for a cash advance obtained through an ATM. The Board found that a transaction fee for a cash advance obtained through an ATM would not always be a finance charge if fees that are imposed on debit cards offered by the credit card issuer were considered in applying the ''comparable cash transaction'' exception. In particular,

[619] Transaction charges that are imposed on checking accounts or other transaction accounts (other than prepaid accounts) are discussed in the section-by-section analysis of § 1026.4(b) above, and transaction charges imposed on the asset feature of a prepaid account accessible by a hybrid prepaid-credit card are discussed in the section-by-section analysis of § 1026.4(b)(11)(ii) below.

[620] 74 FR 5244, 5263 (Jan. 29, 2009).

whether the transaction fee for the cash advance is a finance charge would depend on whether the credit card issuer provided asset accounts and offered debit cards on those accounts and whether the fee exceeds the fee imposed for a cash advance transaction through an ATM on such asset accounts. The Board believed this type of distinction was not helpful for consumers in understanding transaction fees imposed on their credit card accounts. Thus, the Board adopted existing 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 existing 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 existing comment 4(b)(2)–1 addresses situations distinct from those addressed by comment 4(a)–4.

With respect to whether a per transaction charge imposed on the covered separate credit feature accessible by a hybrid prepaid-credit card should be a finance charge, the Bureau believes that it is appropriate to follow the same rules that generally apply to credit cards, as set forth in existing comment 4(a)–4. Thus, consistent with existing comment 4(a)–4, any transaction charge imposed on a cardholder by a card issuer on a covered separate credit feature accessible by a hybrid prepaid-credit card is a finance charge. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, transaction charges that are imposed on the asset feature of a prepaid account are subject to new § 1026.4(b)(11)(ii) and related commentary, instead of new § 1026.4(b)(11)(i).

4(b)(11)(ii)

In contrast to the rule for fees imposed on a covered separate credit feature accessible by a hybrid prepaid-credit card, new § 1026.4(b)(11)(ii) provides that any fee or charge imposed on the asset feature of a prepaid account is a finance charge only to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. Fees described in final § 1026.4(c) through (e), as applicable, are excluded from the definition of finance charge, although, as discussed in more detail below, the Bureau is narrowing certain of these existing exclusions as they are applied to credit offered in connection with prepaid accounts.

The Bureau's approach with regard to fees charged on an asset feature accessible by a hybrid prepaid-credit card is consistent with the comparable cash exception to the definition of finance charge. This approach is similar to the existing approach that Regulation Z takes outside the credit card context in exempting fees from the definition of finance charge if they are comparable to fees charged on a checking or other asset account for transactions that do not involve a credit feature as discussed in final § 1026.4(b)(2), although there are important distinctions as discussed below.

Compared to the proposed approach, the Bureau believes that the approach adopted in the final rule with respect to the asset feature will make it easier for both prepaid account issuers and for consumers to track and understand how the separate credit feature and asset features operate in connection with a hybrid prepaid-credit card. The Bureau is concerned that excluding all fees charged on an asset feature from the definition of finance charge would invite prepaid account issuers to structure their programs in ways that make it very difficult for consumers to analyze the true cost of credit on a hybrid prepaid-credit card. At the same time, the Bureau recognizes that certain fees charged in conjunction with the operation of the prepaid asset feature are not driven by credit use, and that it is useful to both prepaid account issuers and consumers to differentiate those fees from other charges. The Bureau believes that new § 1026.4(b)(11)(ii) appropriately balances these considerations by providing that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, fees or charges imposed on the asset feature of the prepaid account are finance charges only to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

Comparable Fees

While the Bureau's approach with regard to charges imposed on an asset feature accessible by a hybrid prepaid-credit card is somewhat similar to the rule provided in existing § 1026.4(b)(2) with regard to when transaction fees, service fees, and carrying fees imposed on checking and other transaction accounts are finance charges under Regulation Z, the final rule differs in one particularly important respect: It provides detailed guidance in new comment 4(b)(11)(ii)–1 regarding how fees on prepaid accounts without a covered separate credit feature should be compared to fees imposed on prepaid accounts with a covered separate credit feature accessible by a hybrid prepaid-credit card. This guidance is more detailed and more restrictive than the guidance provided under final § 1026.4(b)(2) with regard to checking and transaction accounts other than prepaid accounts.

In developing these rules, as set forth in new § 1026.61(a)(2)(i)(B) and new comment 61(a)(2)–4.ii, the Bureau was conscious that there were two potentially distinct types of credit extensions that could occur on a covered separate credit feature accessible by a hybrid prepaid-credit card. The first type of credit extension is where the hybrid prepaid-credit card accesses credit in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second type of credit extension is where a consumer makes a standalone draw or transfer of credit from the covered separate credit feature, outside the course of any transactions conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Because the two scenarios involve different sets of activities, the range of fees triggered is also likely to be different. As discussed in more detail below, new comment 4(b)(11)(ii)–1 therefore provides separate guidance on the comparable fees under new § 1026.4(b)(11)(ii) with respect to each of the two types of credit extensions.

New comment 4(b)(11)(ii)–1.i explains that new comment 4(b)(11)(ii)–1.ii and iii provides guidance with respect to comparable fees under § 1026.4(b)(11)(ii) for these two types of

credit extensions on a covered separate credit feature. New comment 4(b)(11)(ii)–1.ii provides guidance for credit extensions where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In addition, new comment 4(b)(11)(ii)–1.iii provides guidance for credit extensions where a consumer draws or transfers credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. New comment 4(b)(11)(ii)–1.ii and iii are discussed in more detail below.

Credit extensions from the covered separate credit feature within the course of a transaction. New comment 4(b)(11)(ii)–1.ii provides guidance for credit extensions where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Specifically, new comment 4(b)(11)(ii)–1.ii provides that where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing such a transaction, any per transaction fees imposed on the asset feature of the prepaid account, including load and transfer fees, for such credit from the credit feature should be compared to the per transaction fees for each transaction to access funds in the asset feature of a prepaid account that is in the same prepaid account program but does not have such a credit feature. Thus, per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of new § 1026.4(b)(11)(ii).

To illustrate these principles, new comment 4(b)(11)(ii)–1.ii sets forth several examples explaining when a finance charge is imposed on the asset feature of a prepaid account in situations in which credit is accessed from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

New comment 4(b)(11)(ii)–1.ii.A provides the following example: Assume that a prepaid account issuer charges $0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of prepaid accounts. Also, assume that the prepaid account issuer charges $0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, the $0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge because it is a comparable fee to the $0.50 per transaction fee imposed on the prepaid account without a covered separate credit feature.

Nonetheless, as described in new comment 4(b)(11)(ii)–1.ii.B, in this example, if the prepaid account issuer instead charged $1.25 on the asset feature of a prepaid account for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction, the additional $0.75 is a finance charge.

As another example set forth in new comment 4(b)(11)(ii)–1.ii.C, assume a prepaid account issuer charges $0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of prepaid accounts. Assume also that the prepaid account issuer charges both a $0.50 per transaction fee and a $1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.,* a combined fee of $1.75 per transaction) must be compared to the $0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. Accordingly, the $1.25 excess is a finance charge.

New comment 4(b)(11)(ii)–1.ii.D provides another example. Under this example, assume a prepaid account issuer charges both a $0.50 fee for each transaction that accesses funds in the asset feature of prepaid accounts without a covered separate credit feature, and charges a load fee of $1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature. Assume also that the prepaid account issuer charges both a $0.50 per transaction fee and a $1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program when the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.,* a combined fee of $1.75 per transaction) must be compared to the $0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source (in this example, the $1.25 fee to load funds from another asset account) are not comparable for purposes of new § 1026.4(b)(11)(ii). Accordingly, the $1.25 excess is a finance charge.

The Bureau also notes that the per transaction fee for a credit extension in the course of a transaction from a covered separate credit feature cannot be compared to a fee for declining to pay a transaction that is imposed on a prepaid account without such a credit feature in the same prepaid account program.

The Bureau believes that the above standard for determining comparable fees with respect to fees or charges imposed on the asset feature of prepaid accounts accessible by hybrid prepaid-credit cards will help prevent evasion of the rules set forth in the final rule with respect to hybrid prepaid-credit cards. The Bureau believes that many prepaid cardholders who wish to use covered separate credit features may not have other deposit accounts or savings accounts from which they can transfer funds to prevent an overdraft on the prepaid account in the course of authorizing, settling, or otherwise completing a transaction to obtain goods or services, obtain cash, or conduct P2P transfers. As a result, the Bureau does not believe that a per transaction fee for credit drawn or transferred from a covered separate credit feature accessible by a hybrid prepaid-credit card during the course of a transaction should be allowed to be compared with a per transaction fee for a service that many prepaid cardholders who wish to use covered separate credit features may not be able to use.

The Bureau is concerned that if it permitted such a comparison, card issuers could charge a substantial fee to transfer funds from the checking account or savings account during the course of a transaction using the prepaid account (which many prepaid cardholders who wish to use covered separate credit features may not be able to use as a practical matter) and then

charge that same substantial per transactions fees for credit drawn or transferred from the covered separate credit feature during the course of a transaction without such fees being considered a finance charge. This could allow the prepaid account issuer to avoid charging a finance charge and avoid the application of the Credit CARD Act provisions that are generally set forth in subpart G, such as the restriction on fees set forth in § 1026.52. For this reason, the Bureau believes that it is appropriate to limit the comparable fee in this case to per transaction fees imposed on prepaid accounts for transactions that access funds in the prepaid account in the same prepaid account program that does not have a covered separate credit feature. All prepaid accountholders can use prepaid accounts to make transactions that access available funds in the prepaid account, so these types of transactions will be available to all prepaid accountholders.

Credit extensions from a covered separate credit feature outside the course of a transaction. New comment 4(b)(11)(ii)–1.iii provides guidance for credit extensions where a consumer draws or transfers credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers, as discussed above.

New comment 4(b)(11)(ii)–1.iii provides that load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction are compared only with fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of new § 1026.4(b)(11)(ii).

New comment 4(b)(11)(ii)–1.iii provides examples to illustrate this guidance. New comment 4(b)(11)(ii)–1.iii.A provides the following example: Assume a prepaid account issuer charges a $1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without such a credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a non-covered separate credit feature (in this example, the $1.25 fee to load funds from the non-covered separate credit feature) are not comparable for purposes of new § 1026.4(b)(11)(ii).

In a second example described in new comment 4(b)(11)(ii)–1.iii.B, assume that a prepaid account issuer charges a $1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (in this example, the $1.25 fee to load funds form the separate asset account) are not comparable for purposes of new § 1026.4(b)(11)(ii).

As an initial matter, the Bureau believes that it is appropriate to compare fees imposed to load or transfer credit from a covered separate credit feature outside the course of transactions conducted with the card to fees, if any, for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts with no covered separate credit feature because those direct deposits also occur outside the course of transactions conducted with the card that access funds in the prepaid account. Thus, the Bureau believes that these two types of situations are comparable because they both occur outside the course of transactions conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers.

The Bureau recognizes that there may be other types of loads or transfers of asset funds or credit that can occur outside the course of a transaction, including loads or transfers of funds from other asset accounts, such as checking accounts or savings accounts, or loads or transfers of credit from other credit accounts that are not covered separate credit features. Nonetheless, the Bureau believes that many prepaid accountholders who wish to use covered separate credit features may not have other asset accounts, such as checking accounts or savings accounts, or other credit accounts, from which they can draw or transfer asset funds or credit for deposit into the prepaid account outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers. As a result, the Bureau does not believe that load or transfer fees for credit from a covered separate credit feature accessible by a hybrid prepaid-credit card outside the course of a transaction should be allowed to be compared with a load or transfer fees from an asset account, or non-covered separate credit feature, outside the course of a transaction.

The Bureau is concerned that if it did so, card issuers could charge a substantial fee to load or transfer funds from the checking account or savings account or a non-covered separate credit feature (which many prepaid cardholders who wish to use covered separate credit features may not be able to use as a practical matter) and then charge that same substantial fee for load or transfer fees for credit loaded or transferred from the covered separate credit feature outside the course of a transaction without that fee being a finance charge. This could allow the prepaid account issuer to avoid charging a finance charge and avoid the application of the Credit CARD Act provisions that are generally set forth in subpart G, such as the restriction on fees set forth in § 1026.52. For this reason, the Bureau believes that it is appropriate to limit the comparable fee in this case to fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. The Bureau believes that such direct deposit methods commonly are

offered on most types of prepaid accounts and that most prepaid accountholders who wish to use covered separate credit features are able to avail themselves of these methods.[621]

Relation to Regulation E § 1005.18(g)

New comment 4(b)(11)(ii)–2 provides a cross-reference to a related provision in final Regulation E § 1005.18(g). As discussed in more detail in the section-by-section analysis of Regulation E § 1005.18(g) above, this provision only permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. Under that provision, a financial institution cannot charge a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts without such a credit feature that are in the same prepaid account program.

4(c) Charges Excluded From the Finance Charge

Existing § 1026.4(c) provides a list of charges that are excluded from the definition of finance charge under § 1026.4. The charges listed in existing § 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.

The proposal would have provided that the exclusion from the definition of finance charge in existing § 1026.4(c)(3) for overdraft services on checking accounts would not have applied to credit accessed by a prepaid card. It also would have provided that the exclusion for participation fees in existing § 1026.4(c)(4) would not apply to credit accessed by a prepaid card.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, many industry commenters urged the Bureau to provide that the exception in § 1026.4(c)(3) applies to overdraft credit accessed in connection with prepaid accounts. One credit union service organization also indicated that the Bureau should provide that the exception in existing § 1026.4(c)(4) should apply to annual and other periodic fees to hold a credit plan in connection with a prepaid account.

Several consumer group commenters stated that the exception in § 1026.4(c)(1) for application fees for credit features should not apply to credit accessed by prepaid cards. One consumer group commenter urged that the exceptions in existing § 1026.4(c)(2) for late fees, over the limit fees, and returned payment fees should not apply to credit accessed by prepaid cards. This commenter expressed concern that prepaid account issuers might use such fees as a back-end method of credit pricing, and stated that the Bureau should either include these fees in definition of ''finance charge'' or make clear that they cannot be charged on prepaid accounts.

As discussed in more detail below, the Bureau is amending existing § 1026.4 and its commentary to provide that the exclusion in existing § 1026.4(c)(3) does not apply to credit offered in connection with a prepaid account and that the exclusion in existing § 1026.4(c)(4) does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.

The Bureau has not adopted any changes to the exception in existing § 1026.4(c)(1) related to application fees, or to the exception in existing § 1026.4(c)(2) related to late fees, over the limit fees, returned check fees, and other fees for delinquency, default, or a similar occurrence. The Bureau believes these changes are outside the scope of the proposal and does not believe that these changes are warranted at this time. The Bureau will continue to monitor whether changes to these exceptions with respect to covered separate credit features accessible by hybrid prepaid-credit cards are needed.

4(c)(3)

Existing § 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 in the *Overview of the Final Rule's Amendments to Regulation Z* section above, the Board developed this exception to the term ''finance charge'' 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 the Final Rule's Amendments to Regulation Z* section, the Bureau intended generally that, under its proposal, Regulation Z would apply to credit accessed by prepaid cards that are credit cards. Thus, the Bureau proposed to revise existing § 1026.4(c)(3) and existing comment 4(c)(3)–1 to specify that this provision would not have applied to credit accessed by a prepaid card. As a result, under the proposal, charges imposed by a financial institution for paying items that overdraw a prepaid account would have been 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 such an overdraft would have been a creditor.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, many industry commenters indicated that the Bureau should provide that the exception in existing § 1026.4(c)(3) applies to overdraft credit accessed in connection with prepaid accounts. For the reasons discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau is revising existing § 1026.4(c)(3) and existing comment 4(c)(3)–1 to provide that the exception in that paragraph does not apply to credit offered in connection with a prepaid account as defined in § 1026.61.[622] The Bureau also is adding new comment 4(c)(3)–2 to cross-reference new comment 4(b)(11)–1 for guidance on when fees imposed with regard to credit accessed in connection with a prepaid account as defined in § 1026.61 are finance charges.

[621] The Bureau understands that prepaid account issuers currently offering overdraft services condition consumer eligibility on receipt of a regularly-occurring direct deposit in excess of a specified threshold.

[622] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed § 1026.4(c)(3) and comment 4(c)(3)–1 would have provided that the exception set forth in § 1026.4(c)(3) would not have applied to credit accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.4(c)(3) and comment 4(c)(3)–1 related to these account numbers.

The Bureau notes that existing § 1026.4(c)(3) focuses on written agreements in determining whether charges imposed by a financial institution for paying items that overdraw an account are finance charges. As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that whether overdraft credit structured as a negative balance on a prepaid account is covered under Regulation Z should not turn on whether there is an agreement to extend such overdraft credit. Instead, new § 1026.61(a)(4) sets forth the circumstances in which overdraft credit structured as a negative balance on a prepaid account can be excluded from Regulation Z. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(4) below, the Bureau provides that a prepaid card is not a hybrid prepaid-credit card (and is not a credit card under Regulation Z) where the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. If the conditions of the exception in new § 1026.61(a)(4) are met, the prepaid account issuer will not be a ''card issuer'' under final § 1026.2(a)(7) and thus the credit card rules in Regulation Z do not apply to such overdraft credit features. In addition, new comment 4(b)(11)–1.iii provides that fees charged on the asset feature of the prepaid account in accordance with the exception in new § 1026.61(a)(4) are not finance charges. This ensures that the prepaid account issuer is not a ''creditor'' under the general definition of ''creditor'' set forth in existing § 1026.2(a)(17)(i) as a result of charging these fees on the prepaid account.

4(c)(4)

Existing § 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. Existing comment 4(c)(4)–1 explains that the participation fees described in existing § 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 such a fee may not be treated as a participation fee.

The Bureau proposed to amend existing § 1026.4(c)(4) and existing comment 4(c)(4)–1 to provide that this exception would not have applied to credit accessed by a prepaid card. One credit union service organization indicated that the Bureau should provide that the exception in existing § 1026.4(c)(4) should apply to annual and other periodic fees to hold a credit plan in connection with a prepaid account. This commenter argued that defining the maintenance fee as a finance charge is confusing to consumers, and it is not what consumers expect ''finance charges'' to be. One consumer group supported the Bureau's proposal to include participation fees within the definition of ''finance charge'' in Regulation Z when those fees are charged in connection with credit on prepaid cards. This commenter argued that participation fees have been used to disguise the cost of credit. This commenter suggested that including participation fees in the definition of ''finance charge'' would prevent these evasions.

The Bureau is adopting proposed § 1026.4(c)(4) with revisions to be consistent with new § 1026.61. Specifically, the Bureau is amending existing § 1026.4(c)(4) to provide that this exception does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.[623]

The Bureau believes that the exception in existing § 1026.4(c)(4) is not dictated by TILA's definition of ''finance charge.'' Rather, the Board added this exception to existing § 1026.4(c)(4) in 1981 based on an interpretation letter that the Board had previously issued.[624] 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 to or as a condition of any specific extension of credit.[625] 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 the Final Rule's Amendments to Regulation Z* section, the Bureau intends generally to cover covered separate credit features accessible by hybrid prepaid-credit cards as ''open-end credit'' under Regulation Z. The Bureau believes these credit features 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) above 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 covered separate credit features accessible by hybrid prepaid-credit cards could be significant costs to consumers, even if interest or transaction fees are not charged with respect to the credit features, and thus the protections in Regulation Z that apply to open-end credit, including those in subpart G, should apply to covered separate credit features 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 accessible by a credit card will be beneficial to consumers using such credit features. For example, existing § 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, existing § 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 will provide important protections to consumers to help ensure that consumers using covered separate credit features accessible by hybrid prepaid-credit cards where only annual or other periodic fees are imposed for

[623] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed § 1026.4(c)(4) would have provided that the exception set forth in § 1026.4(c)(4) would not have applied to credit accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.4(c)(4) related to these account numbers.

[624] 46 FR 20848, 20855 (Apr. 7, 1981).

[625] 36 FR 16050 (Aug. 19, 1971).

participation in the credit feature 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 is revising existing § 1026.4(c)(4) and existing comment 4(c)(4)–1 to provide that the exception for participation fees from the definition of ''finance charge'' does not apply in relation to a covered separate credit feature accessible by a hybrid prepaid-credit card, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. The Bureau also is adding new comment 4(c)(4)–3 to cross-reference new comment 4(b)(11)–1 for guidance on when fees imposed in connection with credit accessed in connection with a prepaid account as defined in § 1026.61 are finance charges.

As discussed above, the Bureau is amending existing § 1026.4(c)(4) to provide that the exclusion in that paragraph does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61. This change to existing § 1026.4(c)(4) is limited to fees to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card, rather than covering all credit in connection with a prepaid account. The Bureau intends to preserve existing § 1026.4(c)(4) with respect to non-covered separate credit features for which a participation fee is charged. Thus, the exclusion of participation fees from the definition of finance charge in final § 1026.4(c)(4) would still apply with respect to participation fees imposed on non-covered separate credit features, as applicable.

When a prepaid account issuer offers incidental credit, new § 1026.61(a)(4) generally does not allow credit-related fees to be charged for the incidental credit, including fees or charges for holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. Thus, if a prepaid account issuer did charge these participation fees, it would fall outside the scope of new § 1026.61(a)(4) and would become subject to the general rules for hybrid prepaid-credit cards including new § 1026.4(c)(4). This prepaid account issuer would be subject to new § 1026.61(b) and thus must structure the credit feature as a covered separate credit feature, as well as being subject to new § 1026.4(c)(4).

Subpart B—Open-End Credit

The provisions in subpart B generally apply to a ''creditor,'' as defined in existing § 1026.2(a)(17), that extends ''open-end credit,'' as defined in existing § 1026.2(a)(20). As set forth in existing § 1026.2(a)(17)(iii) and (iv), the provisions of subpart B also generally apply to card issuers that extend credit. These card issuers generally would be ''creditors'' for purposes of subpart B. These provisions generally require that such creditors must provide account-opening disclosures and periodic statement disclosures. These provisions also set forth rules for the treatment of payments and credit balances as well as 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 existing § 1026.2(a)(15)(ii). In addition, subpart B also sets forth, in existing § 1026.12, provisions applicable to credit card transactions; those provisions generally apply to a ''card issuer'' as defined in existing § 1026.2(a)(7).

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a ''covered separate credit feature.'' Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as ''non-covered separate credit features,'' as discussed in the section-by-section analysis of § 1026.61(a)(2) below. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

As discussed in the section-by-section analysis of § 1026.2(a)(20) above, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of ''open-end credit'' and that credit will not be home-secured. See the section-by-section analysis of the definition of ''open-end-credit'' in § 1026.2(a)(20), the definition of ''finance charge'' in § 1026.4, and the definition of ''hybrid prepaid-credit card'' in § 1026.61(a).

In addition, as discussed in the section-by-section analyses of §§ 1026.2(a)(7), (a)(15)(i) and (ii), and 1026.61(a), a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) credit plan is a ''credit card account under an open-end (not home-secured) consumer credit plan'' under final § 1026.2(a)(15)(ii) and the person issuing the hybrid prepaid-credit card (and the person offering the covered separate credit feature) are ''card issuers'' under final § 1026.2(a)(7). For a discussion of how card issuers would still be subject to certain

provisions in subpart B if they extend credit that is not ''open-end credit,'' see the section-by-section analysis of § 1026.2(a)(17) above.

The Bureau is revising subpart B to provide guidance on how certain provisions in subpart B apply to covered separate credit features accessible by hybrid prepaid-credit cards. Specifically, the final rule provides additional guidance regarding: (1) Disclosure requirements applicable to account opening in final § 1026.6; (2) disclosure requirements applicable to periodic statements in final §§ 1026.5, 1026.7, and 1026.8; (3) treatment of payment requirements as set forth in final § 1026.10; and (4) billing error procedures in final § 1026.13.

The Bureau also is revising certain provisions that apply to credit card transactions in final § 1026.12 to provide guidance on how those provisions apply to credit card transactions that are made from a covered separate credit feature accessible by a hybrid prepaid-credit card. Specifically, the final rule provides additional guidance on: (1) Unsolicited issuance of a credit card in final § 1026.12(a); (2) the right of a cardholder to assert claims or defenses against a card issuer in final § 1026.12(c); and (3) the prohibition on offsets by a card issuer in final § 1026.12(d).

To facilitate compliance, the Bureau also is clarifying that with respect to a non-covered separate credit feature that is accessible by a prepaid card, as defined in new § 1026.61, fees or charges imposed on the asset feature of the prepaid account are not ''charges imposed as part of the plan'' under final § 1026.6(b)(3) with respect to the non-covered separate credit feature, and thus these fees or charges are not required to be disclosed under Regulation Z with respect to the non-covered separate credit feature. In addition, the Bureau is clarifying that fees or charges that are not charges imposed as part of the plan are not subject to the offset restrictions set forth in final § 1026.12(d). As discussed in the section-by-section analyses of Regulation E § 1005.18(b)(4)(ii) and (f)(1) above, fees or charges imposed on the asset feature of the prepaid account are required to be disclosed under Regulation E.

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 existing § 1026.5(b)(2), set forth the timing requirements for providing periodic statements for open-end credit accounts and credit card accounts.[626] Existing § 1026.5(b)(2)(i) provides that a creditor that extends open-end credit or credit accessible by a credit card generally is required to provide a periodic statement, as required by existing § 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.

Existing § 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 for those accounts are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to existing § 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) above for a discussion of the term ''credit card account under an open-end (not home-secured) consumer credit plan.''

TILA sections 127(b)(12) and (o), which are implemented in existing § 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.[627] Existing § 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. In addition, 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 open-end credit, the Board, in implementing these provisions, set forth in existing § 1026.7(b)(11)(ii)(A) that the payment due date requirement in existing § 1026.7(b)(11)(i)(A) does not apply to periodic statements provided solely for charge card accounts. Thus, as explained in existing comment 5(b)(2)(ii)–4.i, the requirement in existing § 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.[628] 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 existing § 1026.7(b)(11)(i)(A) to periodic statements provided solely for charge card accounts.

The Bureau's Proposal

The proposal would have amended existing § 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 and the charge card account is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, under the proposal, the due date disclosure in proposed § 1026.7(b)(11)(i)(A) would have applied 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 credit card that is a prepaid card. Thus, as a technical revision, the proposal would have revised existing comment 5(b)(2)(ii)–4.i to reflect the proposed changes to existing § 1026.7(b)(11) that the due date requirement would apply to a charge card account accessed by a prepaid card that is a charge card where the charge card account is a credit card account under an open-end (not home-secured) consumer credit plan.

[626] 15 U.S.C. 1637(b) and 1666b; *see also* 15 U.S.C. 1602(g).

[627] 15 U.S.C. 1637(b)(12), (o).

[628] 75 FR 7658 at 7672–7673, Feb. 22, 2010.

Comments Received

One industry trade association indicated that the Bureau should not subject prepaid cards that are charge cards to rules that do not apply to other types of charge cards but did not specify why this specific proposal was not necessary.

The Final Rule

The Bureau is modifying comment 5(b)(2)(ii)–4.i as proposed with technical revisions to clarify the intent of the comment and to be consistent with new § 1026.61. As discussed in the section-by-section analysis of § 1026.7(b)(11) below, the final rule provides that the due date disclosure set forth in final § 1026.7(b)(11)(i)(A) applies to periodic statements provided for a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card account where the charge card account is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, as a technical revision, the final rule revises comment 5(b)(2)(ii)–4.i to state that the exception from the disclosure requirements in final § 1026.7(b)(11) for charge card accounts does not apply to covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards as defined in new § 1026.61.[629] As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed in more detail in the section-by-section analyses of §§ 1026.7(b)(11) and 1026.12(d)(3) below, 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 credit extended through a covered separate credit feature. In particular, the Bureau believes that for all covered separate credit features—including charge card accounts—accessible by a hybrid prepaid-credit card, where these credit features are credit card accounts under an open-end (not home-secured) consumer credit plan, the card issuer should be required to adopt reasonable procedures designed to ensure that periodic statements for these credit features are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement, pursuant to final § 1026.7(b)(11)(i)(A). As discussed in more detail in the section-by-section analyses of §§ 1026.7(b)(11) and 1026.12(d)(3), the Bureau believes that this requirement, along with changes to the offset prohibition in final § 1026.12(d)(3), will ensure that the due date of the covered separate credit feature accessible by a hybrid prepaid-credit card 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.

As discussed in more detail in the section-by-section analysis of § 1026.12(d)(3) below, the Bureau is concerned that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, some card issuers may attempt to circumvent the prohibition on offsets by both specifying that each transaction on the covered separate credit feature 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 from the prepaid account when deposits are received into the prepaid account. The Bureau believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards 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 who choose to rely on covered separate credit features. The Bureau also believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards may be able to obtain a consumer's written authorization to debit the prepaid account more easily than for other types of credit card accounts because consumers may believe that, in order to obtain credit, 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.

Section 1026.6 Account-Opening Disclosures

TILA section 127(a) requires creditors to provide consumers with information about key credit terms before opening an open-end account or a credit card account, such as rates and fees that may be assessed on the account.[630] This TILA provision is implemented in existing § 1026.6.

Existing § 1026.6(b) sets forth the account-opening disclosures that must be provided with respect to open-end credit or credit card accounts that are not home-secured. Under existing § 1026.6(b)(1) and (2), certain account-opening disclosures must be disclosed in a tabular format. These disclosures include: (1) The APRs 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 account, 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; (6) any late payment fees, over the limit fees, or returned payment fees; (7) whether a grace period on transactions applies; (8) the name of the balance computation method used to determine the balance for each feature on the credit account; (9) any fees for required insurance, debt cancellation, or debt suspension coverage; and (10) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the credit account, disclosures about the available credit that will remain after those fees are imposed.

Existing § 1026.6(b)(3) sets forth general disclosure requirements about costs imposed as part of the plan. Specifically, existing § 1026.6(b)(3) provides that a creditor must disclose, to the extent applicable: (1) For charges imposed as part of an open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or an explanation of how the charge is determined; and (2) for finance charges, a statement of when the charge begins to accrue and an explanation of whether or not any time period exists

[629] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed comment 5(b)(2)(ii)–4.i would been revised to reflect the proposed changes to § 1026.7(b)(11) that the due date requirement does apply to charge card accounts accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 5(b)(2)(ii)–4.i related to these account numbers.

[630] 15 U.S.C. 1637(a); *see also* 15 U.S.C. 1602(g).

within which any credit that has been extended may be repaid without incurring the charge.

Existing § 1026.6(b)(3)(ii) provides that charges imposed as part of the plan are: (1) Finance charges identified under existing § 1026.4(a) and (b); (2) charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default, attorney's fees whether or not automatically imposed, and post-judgment interest rates permitted by law; (3) taxes imposed on the credit transaction by a State or other governmental body, such as documentary stamp taxes on cash advances; (4) charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment; (5) charges imposed for terminating a plan; and (6) charges for voluntary credit insurance, debt cancellation, or debt suspension.

Existing § 1026.6(b)(3)(iii) provides that charges that are not imposed as part of the plan include: (1) Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system; (2) a charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature; and (3) charges under § 1026.4(e) which are disclosed as specified.

Existing § 1026.5(b)(1) provides that charges imposed as part of the plan that must be disclosed in the account-opening table under existing § 1026.6(b)(2) must be provided before the first transaction is made under the plan. Charges that are imposed as part of the plan and are not required to be disclosed under existing § 1026.6(b)(2) may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner that a consumer would be likely to notice them.

The proposal did not contain proposed changes to existing § 1026.6(b)(2) and (3). Nonetheless, the Bureau believes that additional guidance is needed with respect to these disclosure requirements given the changes that the final rule makes to the existing definition of ''finance charge'' in § 1026.4 with respect to credit offered in connection with prepaid accounts. As discussed in the section-by-section analysis of § 1026.4(b)(11) above, the final rule provides guidance on when fees or charges imposed on prepaid accounts are finance charges under final § 1026.4. Consistent with the changes to the definition of ''finance charge'' in the final rule, the final rule also provides guidance with respect to the disclosure requirements in § 1026.6(b)(2) and (3).

As discussed below, to ensure compliance with the disclosure requirements in final § 1026.6(b)(2) and (3), with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, the final rule provides guidance on how the account-opening disclosure requirements in final § 1026.6(b)(2) and (3) apply to fees and charges imposed on the asset feature of the prepaid account. Specifically, the final rule provides that, with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, fees or charges imposed on the asset feature of the prepaid account are not ''charges imposed as part of the plan'' with respect to the covered separate credit feature to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. Thus, these fees or charges are not required to be disclosed in the account-opening disclosures pursuant to final § 1026.6(b)(2) and (3) with respect to the covered separate credit feature. As discussed in the section-by-section analyses of Regulation E § 1005.18(b)(4)(ii) and (f)(1) above, these fees or charges are required to be disclosed under Regulation E.

In addition, a non-covered separate credit feature may be subject to the provisions in § 1026.6(b)(2) and (3) in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account. To facilitate compliance, the Bureau also is clarifying that fees or charges imposed on the asset feature of the prepaid account are not ''charges imposed as part of the plan'' with respect to the non-covered separate credit feature. Thus, these fees or charges are not required to be disclosed under final § 1026.6(b)(2) and (3) with respect to that non-covered separate credit feature.

Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

With regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, the Bureau is adding new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1 to provide guidance on when a fee or charge imposed on the asset feature of the prepaid account is considered a ''charge imposed as part of the plan'' under final § 1026.6(b)(3) with respect to the covered separate credit feature. Specifically, new § 1026.6(b)(3)(iii)(D) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, the term ''charges imposed as part of the plan'' does not include any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

New comment 6(b)(3)(iii)(D)–1.i provides an example of the rule set forth in new § 1026.6(b)(3)(iii)(D). For example, assume a prepaid account issuer charges a $0.50 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card and a $0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. In this case, the $0.50 fees are comparable. Thus, the $0.50 fee for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of a transaction conducted with the card is not a charge imposed as part of the plan.

However, in this example, if the prepaid account issuer imposes a $1.25 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, the $0.75 excess is a charge imposed as part of the plan with respect to the covered separate credit feature.

New comment 6(b)(3)(iii)(D)–1.i also states that this $0.75 excess also is a finance charge under new § 1026.4(b)(11)(ii). New comment 6(b)(3)(iii)(D)–1.ii cross-references new comment 4(b)(11)(ii)–1 for additional illustrations of when a prepaid account issuer is charging comparable per transaction fees or load or transfer fees on the asset feature of the prepaid account.

The Bureau believes that without this clarification, with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, certain fees imposed on the asset feature of the prepaid account that are not finance charges still could be considered charges imposed as part of the plan under existing § 1026.6(b)(3)(ii) with respect to the covered separate credit feature. Specifically, existing § 1026.6(b)(3)(ii)(D) provides that the term ''charges imposed as part of the plan'' includes ''charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.'' Existing comment 6(b)(3)(ii)–2.i provides that charges for which the payment or nonpayment affect the consumer's access to the plan include ''fees for using a card at a creditor's ATM to obtain a cash advance.''

The Bureau is concerned that without the clarification in new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1, with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, existing § 1026.6(b)(3)(ii)(D) and existing comment 6(b)(3)(ii)–2.i could be read to include per transaction fees imposed on the asset feature of the prepaid account as ''charges imposed as part of the plan'' with respect to the covered separate credit feature when those fees are imposed for transactions that involve credit extensions from a covered separate credit feature, even if the fee is not a finance charge under new § 1026.4(b)(11)(ii). As a result, any per transaction fees for those transactions would be disclosed under both Regulations Z and E, even if the fee is not a finance charge under new § 1026.4(b)(11)(ii). For example, assume a prepaid account issuer charges $0.50 on prepaid accounts for each transaction that accesses funds in the asset balance of the prepaid account without a covered separate credit feature accessible by a hybrid prepaid-credit card. Also, assume that the prepaid account issuer charges $0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, the $0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge under new § 1026.4(b)(11)(ii).

Nonetheless, if these per transaction fees were ''charges imposed as part of the plan'' under existing § 1026.6(b)(3)(ii) with respect to the covered separate credit feature, these per transaction fees would need to be disclosed in the Regulation Z account-opening table required by existing § 1026.6(b)(1) and (2) with respect to the covered separate credit feature. In addition, these per transaction fees would need to be disclosed on the Regulation Z periodic statement for the covered separate credit feature in any billing cycles in which they were imposed as set forth in existing § 1026.7(b)(6).

If disclosure of these per transaction fees were required under Regulation Z, these disclosures would duplicate Regulation E disclosures of the fees that are required under the Regulation E final rule. Pursuant to final Regulation E § 1005.18(b)(4) and (f)(1), these per transaction fees must be disclosed in the long form pre-acquisition disclosure and in the initial disclosures for the prepaid account, respectively, because they are imposed on the asset feature of the prepaid account. In addition, under existing Regulation E § 1005.9(b), these per transaction fees must also be disclosed on the Regulation E periodic statement or on the written and electronic transaction histories pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1) because these fees are imposed on the asset feature of the prepaid account. *See also* final Regulation E § 1005.18(c)(4).

New § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1 make clear that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, a fee or charge imposed on the asset feature of the prepaid account is not a ''charge imposed as part of the plan'' for purposes of Regulation Z with respect to the covered separate credit feature if the fee or charge is not a finance charge under new § 1026.4(b)(11)(ii). As discussed in the section-by-section analysis of § 1026.4(b)(11)(ii), the Bureau believes that to the extent that a prepaid account issuer is charging the same comparable fee on the asset balance of a prepaid account with a covered separate credit feature as the fee that it charges on a prepaid account in the same prepaid account program without such a credit feature, the fee is not being charged for credit and thus, is not a finance charge. As such, the Bureau believes that these fees are more appropriately disclosed on the Regulation E disclosures for the asset feature of the prepaid account and should not be disclosed as well on the Regulation Z disclosures with respect to the covered separate credit feature.

Consistent with new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1, with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, the Bureau also is adding new commentary to § 1026.6(b)(2) regarding the disclosure of fees imposed on the asset feature of the prepaid account in the account-opening table. Specifically, new comment 6(b)(2)–1 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, a creditor is required to disclose under existing § 1026.6(b)(2) any fees or charges imposed on the asset feature of the prepaid account that are charges imposed as part of the plan under final § 1026.6(b)(3) to the extent those fees or charges fall within the categories of fees required to be disclosed under existing § 1026.6(b)(2). For example, assume a creditor imposes a $1.25 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card and a $0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. In this case, the $0.75 excess is a ''charge imposed as part of the plan'' under § 1026.6(b)(3)

and must be disclosed as a transaction fee for purchases under § 1026.6(b)(2)(iv) in the account-opening table. New comment 6(b)(2)–2 clarifies that a creditor is not required to disclose in the account-opening table under final § 1026.6(b)(2) any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under final § 1026.6(b)(3).

To ease compliance risk and burden and for other reasons, with regard to a covered separate credit feature and an asset feature that are both accessible by a hybrid prepaid-credit card, the Bureau expects that prepaid account issuers will choose not to impose finance charges on the asset feature of the prepaid account. Instead, the Bureau expects that prepaid account issuers will choose to charge comparable fees on the asset feature of a prepaid account with a linked covered separate credit feature as those charged on prepaid accounts in the same prepaid account program that are not linked to a covered separate credit feature. The Bureau expects that prepaid account issuers will choose to impose finance charges on the credit feature itself, and not on the asset feature of the prepaid account.

As noted above, if a prepaid account issuer does impose finance charges on the asset feature of the prepaid account, as described in new § 1026.4(b)(11)(ii), these finance charges must be disclosed under both Regulations Z and E as applicable. In that case, the prepaid account issuer must coordinate the disclosures under Regulations Z and E and must provide these disclosures in a way that ensures that consumers understand the fees that could be imposed. Nonetheless, as discussed above, the Bureau believes that most prepaid account issuers will choose to avoid imposing finance charges on the asset feature of the prepaid account in order to avoid compliance issues and risks related to providing disclosures with respect to these fees under both Regulations E and Z.

Non-Covered Separate Credit Features

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

A non-covered separate credit feature may be subject to the provisions in § 1026.6(b)(2) and (3) in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account. With respect to non-covered separate credit features that are subject to § 1026.6, to facilitate compliance with the disclosure requirements in final § 1026.6(b)(2) and (3), the final rule provides guidance on how the disclosure requirements in final § 1026.6(b)(2) and (3) apply to fees and charges imposed on the asset feature of a prepaid account in relation to non-covered separate credit features accessible by prepaid cards. Specifically, new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)–1 provide that with regard to a non-covered separate credit feature accessible by a prepaid card as defined in new § 1026.61, the term ''charges imposed as part of the plan'' does not include any fee or charge imposed on the asset feature of the prepaid account. New comment 6(b)(3)(iii)(E)–1 also cross-references new comment 4(b)(11)–1.ii.B that provides that fees or charges imposed on the asset feature of the prepaid account are not finance charges with respect to the non-covered separate credit feature. New comment 6(b)(2)–2 provides that a creditor is not required to disclose in the account-opening table under final § 1026.6(b)(2) any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under final § 1026.6(b)(3). Thus, none of the fees or charges imposed on the asset feature of the prepaid account would be required to be disclosed under final § 1026.6(b) with respect to the non-covered separate credit feature.

As discussed above in relation to covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau believes that without this clarification, certain fees or charges imposed on the asset feature of the prepaid account that are not finance charges with respect to the non-covered separate credit features still could be considered fees imposed as part of the plan under existing § 1026.6(b)(3)(ii). Specifically, existing § 1026.6(b)(3)(ii)(D) provides that the term ''charges imposed as part of the plan'' includes ''charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.'' The Bureau is concerned that without this clarification, existing § 1026.6(b)(3)(ii)(D) could be read to include a load or transfer fee imposed on the asset feature of the prepaid account as a ''charge imposed as part of the plan'' with respect to a non-covered separate credit feature when the fee is imposed for a transaction where credit is drawn or transferred from a non-covered separate credit feature, even if the fee is not a finance charge with respect to the non-covered separate credit feature. Without this clarification, the load or transfer fees for those transactions would need to be disclosed under both Regulations Z and E, even if the fee or charge is not a finance charge under § 1026.4.

New § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)–1 make clear that with regard to a non-covered separate credit feature accessible by a prepaid card, as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are charges imposed as part of the plan with respect to the non-covered separate credit feature for purposes of Regulation Z. Under new comment 4(b)(11)–1.ii.B, these fees or charges are not finance charges with respect to the non-covered separate credit feature. The Bureau believes that because fees or charges that are imposed on the asset feature of the prepaid account are not finance charges under final § 1026.4 with regard to a non-covered separate credit feature, these fees or charges are more appropriately disclosed on the Regulation E disclosures, and they should not be disclosed as well on the Regulation Z disclosures with respect to non-covered separate credit features.

Section 1026.7 Periodic Statement

7(b) Rules Affecting Open-End (Not Home-Secured) Plans & 7(b)(13) Format Requirements

TILA section 127(b) identifies information about an open-end account or credit card account that must be disclosed when a creditor is required to provide periodic statements.[631] TILA section 127(b) is implemented in existing § 1026.7.

The periodic statement requirements in existing § 1026.7 generally apply to a ''creditor'' as defined in existing § 1026.2(a)(17) that extends ''open-end credit'' as defined in existing § 1026.2(a)(20). The periodic statement requirements in existing § 1026.7 also generally apply to card issuers that extend credit, as set forth in existing § 1026.2(a)(17)(iii) and (iv). These card issuers generally are considered ''creditors'' for purposes of the periodic statement requirements.

Existing § 1026.7(b) sets forth the content requirements for periodic statements given with respect to open-end plans or credit card accounts that are not home-secured. Generally, under existing § 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 existing § 1026.8; (4) the 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 each ''charge imposed as part of the plan'' incurred during the billing cycle; (7) 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; (8) the closing date of the billing cycle and the account balance outstanding on that date; and (9) 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 above, any ''charge imposed as part of the plan,'' as that term is defined in existing § 1026.6(b)(3), must be disclosed on the Regulation Z periodic statement if it was incurred during the billing cycle. If the charges imposed as part of the plan are interest charges, these charges must be itemized by type of transaction, and the total interest charges that were imposed during the billing cycle and year to date must also be disclosed. If the charges imposed as part of the plan are fees other than interest charges, these fees must be itemized by type, and the total fee charges that were imposed during the billing cycle and year to date must be disclosed.

Existing § 1026.7(b)(13) requires that certain disclosures on the Regulation Z periodic statement must be disclosed on the front of the first page of the periodic statement. Existing comment 7(b)(13)–1 explains that some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. This existing comment provides that for purposes of providing disclosures on the front of the first page of the periodic statement pursuant to existing § 1026.7(b)(13), the first page of such a combined statement shall be the page on which credit transactions first appear.

Existing § 1026.5(a)(1)(iii) also provides that certain disclosures required by subpart B, including periodic statements required under § 1026.7, may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act.

The periodic statement requirements in final § 1026.7(b) apply to covered separate credit features accessible by hybrid prepaid-credit cards because card issuers that extend credit under those credit features are ''creditors'' that are subject to the periodic statement requirements in final § 1026.7, pursuant to existing § 1026.2(a)(17)(iii) or (iv). As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

Periodic Statements Under Regulations E and Z

Under the proposal, under Regulation E, periodic statements would have been required under existing § 1005.9(b) to disclose non-credit transactions on the prepaid account, unless the financial institution complied with proposed § 1005.18(c). Specifically, in lieu of providing periodic statements required under § 1005.9(b), proposed § 1005.18(c)(1) would have permitted a financial institution to make available to the consumer: (1) The consumer's account balance through a readily available telephone line; (2) 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 (3) 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.

In addition, under the proposal, a creditor would have been required to provide a Regulation Z periodic statement with respect to credit features accessed by prepaid cards that are credit cards because card issuers that extend credit under those credit features would have been ''creditors'' that are subject to the periodic statement requirements in proposed § 1026.7(b), pursuant to existing § 1026.2(a)(17)(iii) or (iv).

One industry trade association urged the Bureau not to impose a Regulation Z periodic statement requirement in addition to the Regulation E statement requirement. This commenter believed that dual statements would add to consumer confusion. This commenter believed that the Regulation E statement requirements should be modified to disclose the finance charge and payment information that otherwise would be included in a Regulation Z statement.

One consumer group commenter indicated that a periodic statement under Regulation Z should be required, and supported allowing a financial institution to combine the Regulations E and Z periodic statements, so long as the combined periodic statement meets the requirements of both regulations.

Under the final rule, a creditor is required to provide a Regulation Z periodic statement under final § 1026.7(b) with respect to a covered separate credit feature that is accessible by a hybrid prepaid-credit card because card issuers that extend credit under those credit features are ''creditors'' that are subject to the periodic statement requirements in final § 1026.7(b), pursuant to existing § 1026.2(a)(17)(iii) or (iv).[632] The Bureau does not believe

[631] 15 U.S.C. 1637(b); *see also* 15 U.S.C. 1602(g).

[632] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Under the proposal, Regulation Z periodic statements would have been required with respect to credit card accounts that are accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not

that modifying the Regulation E periodic statement requirement in existing § 1005.9(b) or the requirement to provide electronic and written account transaction histories pursuant to the periodic statement alternative in final § 1005.18(c)(1) to include disclosures pertaining to a covered separate credit feature accessible by a hybrid prepaid-credit card would benefit consumers. As discussed in the section-by-section analysis of § 1026.61(b) below, new § 1026.61(b) prohibits an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner in connection with a prepaid account from being structured as a negative balance to the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). Instead, a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). This separate credit feature is a ''covered separate credit feature'' under new § 1026.61(a)(2)(i).

The Bureau believes that retaining the requirement to provide a Regulation Z periodic statement with respect to such an overdraft credit feature that is structured as a separate credit feature will reinforce for consumers that this credit feature is separate from the asset feature of the prepaid account.

As discussed above, existing § 1026.7(b)(13) requires that certain disclosures on the Regulation Z periodic statement must be disclosed on the front of the first page of the periodic statement. Existing comment 7(b)(13)–1 explains that some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. This existing comment provides that for purposes of providing disclosures on the front of the first page of the periodic statement pursuant to existing § 1026.7(b)(13), the first page of such a combined statement is the page on which credit transactions first appear. To facilitate compliance, the Bureau is amending comment 7(b)(13)–1 to provide that the guidance in this comment also applies to financial institutions that provide information about prepaid accounts and account activity in connection with covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61 on one periodic statement. This revision to final comment 7(b)(13)–1 clarifies that if a financial institution elects to provide a periodic statement under existing Regulation E § 1005.9(b) to a holder of the prepaid account, the financial institution is permitted to combine the Regulation E and Regulation Z periodic statements. In this case, the financial institution must satisfy the requirements of both Regulation E and Regulation Z in providing the combined statement. If a financial institution instead elects to follow the periodic statement alternative set forth in final Regulation E § 1005.18(c)(1), the financial institution still is required to provide Regulation Z periodic statements in writing pursuant to final § 1026.7. Under existing § 1026.5(a)(1)(iii), financial institutions are permitted to provide the Regulation Z periodic statements in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act.

Charges Imposed as Part of the Plan

Existing § 1026.7(b)(6) provides that a creditor must disclose on the Regulation Z periodic statement, among other things, information about the amount of each ''charges imposed as part of the plan,'' as that term is defined in existing § 1026.6(b)(3), if the charge was incurred during the billing cycle. If the charges imposed as part of the plan are interest charges, these charges must be itemized by type of transaction, and the total interest charges that were imposed during the billing cycle and year to date must also be disclosed. If the charges imposed as part of the plan are fees other than interest charges, these charges must be itemized by type, and the total fee charges that were imposed during the billing cycle and year to date must be disclosed.

Covered separate credit features accessible by hybrid prepaid-credit cards. As discussed in the section-by-section analysis of § 1026.6(b)(3) above, the Bureau is adding guidance in new § 1026.6(b)(3)(iii)(D) and new comment 61(b)(3)(iii)(D)–1 on whether fees or charges imposed on the asset feature of a prepaid account are ''charges imposed as part of the plan'' under final § 1026.6(b)(3) with respect to a covered separate credit feature where the credit feature and the asset feature are both accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

Under the final rule, new § 1026.6(b)(3)(iii)(D) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, the term ''charges imposed as part of the plan'' with respect to the covered separate credit feature does not include any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11) above, these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii) with respect to the covered separate credit feature. As discussed in the section-by-section analysis of § 1026.4(b)(11)(ii) above, the Bureau believes that to the extent that a prepaid account issuer charges the same comparable fee on the asset balance of a prepaid account with a covered separate credit feature as the fee that it charges on a prepaid account in the same prepaid account program without such a credit feature, the fee is not related to credit, and thus, is not a finance charge. As such, the Bureau believes that these fees are more appropriately disclosed on the Regulation E disclosures for the asset feature of the prepaid account and should not be disclosed as well on the Regulation Z disclosures with respect to the covered separate credit feature. Thus, as discussed in the section-by-section analysis of § 1026.6 above, the Bureau is excluding these fees or charges from the term ''charges imposed as part of the plan'' with respect to covered separate credit features under new § 1026.6(b)(3)(iii)(D). Because these fees or charges are not charges imposed as part of the plan, these fees or charges are not required to be disclosed on the Regulation Z periodic statement under existing § 1026.7(b)(6) with respect to the covered separate credit feature.

The fees or charges imposed on the asset feature of the prepaid account must be disclosed on the Regulation E periodic statement pursuant to existing

adopt the provisions related to the account numbers that would have made these account numbers into credit cards under Regulation Z.

§ 1005.9(b), or on the electronic and written account transaction histories pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1). See the section-by-section analysis of Regulation E § 1005.18(c)(1) above.

Non-covered separate credit features. As discussed in the section-by-section analysis of § 1026.61 below, the Bureau has decided not to regulate a prepaid card as a credit card under Regulation Z when it accesses credit from certain credit features. For example, under § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account.

As discussed in the section-by-section analysis of § 1026.6 above, to facilitate compliance with the disclosure requirements in final § 1026.6(b)(2) through (3) for non-covered separate credit features that are subject to existing § 1026.6, the final rule provides guidance on how the disclosure requirements in final § 1026.6(b)(2) and (3) apply to fees and charges imposed on the asset feature of a prepaid account in relation to non-covered separate credit features accessible by prepaid cards. Specifically, new § 1026.6(b)(3)(iii)(E) and new comment 61(b)(3)(iii)(E)–1 provide that with regard to a non-covered separate credit feature accessible by a prepaid card, as defined in new § 1026.61, the term ''charges imposed as part of the plan'' does not include any fee or charge imposed on the asset feature of the prepaid account. New comment 6(b)(3)(iii)(E)–1 also cross-references new comment 4(b)(11)–1.ii.B, which provides that fees or charges imposed on the asset feature of the prepaid account are not finance charges with respect to the non-covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.6 above, the Bureau believes that these fees or charges are more appropriately disclosed on the Regulation E disclosures for the asset feature of the prepaid account and should not be disclosed as well on the Regulation Z disclosures with respect to the non-covered separate credit feature. Thus, as discussed in the section-by-section analysis of § 1026.6 above, the Bureau is excluding these fees or charges from the term ''charges imposed as part of the plan'' with respect to non-covered separate credit features under new § 1026.6(b)(3)(iii)(E). Because these fees or charges are not charges imposed as part of the plan, these fees or charges are not required to be disclosed on the Regulation Z periodic statement under existing § 1026.7(b)(6) with respect to the non-covered separate credit feature that are subject to final § 1026.7. As discussed above, fees or charges imposed on the asset feature of the prepaid account must be disclosed on the Regulation E periodic statement under existing § 1005.9(b) or on the electronic and written account transaction histories provided to consumers pursuant to the periodic statement alternative set forth in final Regulation E § 1005.18(c)(1). *See also* final Regulation E § 1005.18(c)(4).

Paper Periodic Statements

One consumer group commenter indicated that the Bureau should prohibit creditors from making consumers consent to electronic communications a condition of a credit feature and from charging fees for providing paper periodic statements under Regulation Z. The consumer group commenter indicated that while it believes that this prohibition should apply to all credit cards and open-end credit, the commenter was particularly concerned that prepaid cardholders whose cards are linked to credit will be coerced into accepting electronic communications even if paper would serve them better.

The Bureau believes the change is beyond the scope of the proposal, and the change is not warranted at this time. Thus, the Bureau is not including changes to Regulation Z on these issues as part of the final rule. The Bureau will monitor this issue with respect to prepaid cardholders who link covered separate credit features accessible by hybrid prepaid-credit cards to their prepaid accounts.

7(b)(11) Due Date; Late Payment Costs

TILA sections 127(b)(12) and (o), which are implemented in existing § 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.[633] Under existing § 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. Existing § 1026.7(b)(11)(ii) provides, however, that the requirements of existing § 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 § 1026.5(b)(2)(ii) above, although TILA sections 127(b)(12) and (o) do not, on their face, exclude charge card accounts that are open-end credit from the requirement to disclose the due date on each periodic statement, the Board in implementing these provisions set forth in existing § 1026.7(b)(11)(ii)(A) provided that the payment due date requirement and other disclosures set forth in existing § 1026.7(b)(11)(i) do not apply to periodic statements provided solely for 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.[634] 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 existing § 1026.7(b)(11)(i)(A) to periodic statements provided solely for charge card accounts.

The proposal would have amended existing § 1026.7(b)(11)(ii)(A) to provide that the due date disclosure does apply to periodic statements provided solely

[633] 15 U.S.C. 1637(b)(12), (o).

[634] 75 FR 7658 at 7672–7673, Feb. 22, 2010.

for charge card accounts where the charge card account is accessed by a charge card that is a prepaid card. Thus, under the proposal, the due date disclosure in proposed § 1026.7(b)(11)(i)(A) would have applied 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 credit card that is a prepaid card.

One industry trade association indicated that the Bureau should not subject prepaid cards that are charge cards to rules that do not apply to other types of charge cards but did not specify why this specific proposal was not necessary.

The Bureau is adopting § 1026.7(b)(11)(ii)(A) as proposed, with revisions to be consistent with new § 1026.61. Specifically, final § 1026.7(b)(11)(ii)(A) provides that the due date disclosure does apply to periodic statements provided for covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards, as defined in § 1026.61, where the charge card account is a credit card account under an open-end (not home-secured) consumer credit plan.[635] Thus, under the final rule, the due date disclosure in final § 1026.7(b)(11)(i)(A) applies to periodic statements provided for covered separate credit features accessible by hybrid prepaid-credit cards, including charge card accounts, where the covered separate credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes that this due date requirement, the requirement in final § 1026.5(b)(2)(ii)(A), and the changes to the offset prohibition in final § 1026.12(d)(3), will ensure that the due date of a covered separate credit feature accessible by a hybrid prepaid-credit card that is a credit card account under an open-end (not home-secured) consumer credit plan 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 § 1026.12(d)(3) below, the Bureau is concerned that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, including charge card accounts, that are credit card accounts under an open-end (not home-secured) consumer credit plan, some card issuers may attempt to circumvent the prohibition on offsets by specifying that each transaction on the covered separate credit feature 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 covered separate credit features accessible by hybrid prepaid-credit cards 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 who choose to use covered separate credit features. The Bureau also believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards 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 revisions adopted in final § 1026.7(b)(11), along with the changes adopted in final § 1026.5(b)(2)(ii)(A), in the offset provisions in final § 1026.12(d)(3), and in the compulsory use provisions in final Regulation E § 1005.10(e)(1), would mean, respectively, that with respect to covered separate credit features that are accessible by hybrid prepaid-credit cards, including charge card accounts, that are credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers: (1) Would be required to adopt reasonable procedures designed to ensure that periodic statements for the covered separate credit features 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 covered separate credit feature 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 on the covered separate credit feature 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.[636] The statute calls for the Bureau to implement requirements that are sufficient to identify the transaction or to relate the credit extension to sales vouchers or similar instruments previously furnished.

Existing § 1026.8 sets forth the requirements for how issuers must describe each credit transaction on the periodic statement. Existing § 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. Existing § 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. Existing § 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.

[635] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed § 1026.7(b)(11)(ii)(A)(*2*) would have provided that the due date disclosure set forth in § 1026.7(b)(11)(i)(A) does apply to periodic statements provided solely for charge card accounts where the charge card accounts are accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.7(b)(11)(ii)(A)(*2*) related to these account numbers.

[636] 15 U.S.C. 1637(b)(2).

The final rule provides guidance on how creditors may comply with the requirements in final § 1026.8(a) and (b) with respect to covered separate credit features accessible by hybrid prepaid-credit cards.

8(a) Sale Credit

Existing § 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: (1) A brief identification of the property or services purchased, for creditors and sellers that are the same or related; or (2) 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. Existing 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.

The Bureau's Proposal

Under the proposal, sale credit would have included credit transactions where a prepaid card that is a credit card is used to obtain goods or services from a merchant. Thus, under the proposal, any time a prepaid card that was a credit card was used to obtain goods or services from a merchant and the transaction in whole or in part was funded with credit, the credit transaction would have been disclosed as ''sale credit'' under proposed § 1026.8(a) rather than as nonsale credit under proposed § 1026.8(b).

Existing 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 have moved the existing language of comment 8(a)–2 to proposed comment 8(a)–2.i. The proposal also would have added comment 8(a)–2.ii to provide 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, whether or not the merchant is the card issuer or creditor. Proposed comment 8(a)–2.ii also would have provided guidance on how to disclose the amount of the credit transaction for purposes of certain prepaid transactions. Proposed comment 8(a)–2.ii would have 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 cardholder. In this situation, proposed comment 8(a)–2.ii would have provided that the creditor must disclose the amount of credit as ''sale credit'' under existing § 1026.8(a), including the portion of the transaction that involves credit that is not for a purchase of goods or services.

Proposed comment 8(a)–2.ii also would have provided 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 existing § 1026.8(a) is the amount of the credit extension, not the total amount of the purchase transaction. 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 $30 of credit would have been disclosed on the Regulation Z periodic statement. Under the Regulation E proposal, the amount of the transaction that is funded from the prepaid account would have been disclosed either on the Regulation E periodic statement or on the electronic and written histories of account transactions pursuant to the periodic statement alternative set forth in proposed Regulation E § 1005.18(c)(1)(ii).

Comments Received

The Bureau solicited comment on whether 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.

One consumer group commenter indicated that the Bureau should require that the entire transaction be disclosed on both the Regulation Z periodic statement and the Regulation E periodic statement under § 1005.9(b) (or on the electronic and written account transaction histories pursuant to the periodic statement alternative under proposed § 1005.18(c)(1)), indicating on each statement that only part of the transaction came from each account. This commenter believed that consumers who are trying to identify transactions would be confused if the amount listed on each statement does not match the transaction amount.

The Final Rule

The final rule moves proposed comment 8(a)–2.ii to new comment 8(a)–9 and revises this guidance as discussed below. The Bureau also is revising existing comment 8(a)–1 to provide a cross-reference to new comment 8(a)–9 for guidance on when credit accessible by a hybrid prepaid-credit card from a covered separate credit feature must be disclosed on the Regulation Z periodic statement as sale credit or nonsale credit.

New comment 8(a)–9 provides guidance on when credit accessible by a hybrid prepaid-credit card from a covered separate credit feature must be disclosed on the Regulation Z periodic statement as sale credit or nonsale credit. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New comment 8(a)–9 recognizes that a card issuer with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card may structure the overdraft credit feature in two ways to cover situations where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time of authorization or settlement to cover the amount of the transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. With respect to the first way, new comment 8(a)–9.i explains that the covered separate credit feature could be structured such that a consumer can use a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is drawn directly from the covered separate credit feature without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid

prepaid-credit card for $25. In this case, $10 is debited from the asset feature, and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase.

New comment 8(a)–9.i provides that such a transaction is a ''sale credit'' under final § 1026.8(a). In this example, the $15 credit transaction will be treated as ''sale credit'' under final § 1026.8(a).

With respect to the second way, new comment 8(a)–9.ii explains that a covered separate credit feature accessible by a hybrid prepaid-credit card could be structured where a consumer uses a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is transferred from the covered separate credit feature into the asset feature of the prepaid account to cover the amount of the purchase. For example, again, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, the $15 is transferred from the covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account.

New comments 8(a)–9.ii provides that such a transaction is a ''nonsale credit'' under final § 1026.8(b). In this example, the $15 credit transaction is treated as ''nonsale credit'' under § 1026.8(b). The Bureau notes, however, that while this type of credit transaction is disclosed as ''nonsale credit'' under final § 1026.8(b) on the Regulation Z periodic statement, this transaction is still considered a transaction made with the card to purchase goods or services under final § 1026.12(c) and would be subject to final § 1026.12(c). See the section-by-section analysis of § 1026.12(c) below.

The Bureau believes that for disclosure purposes under final §§ 1026.7(b)(2) and 1026.8, it is appropriate to distinguish these two ways in which a creditor may structure a covered separate credit feature accessible by a hybrid prepaid-credit card. The Bureau believes that this distinction will help consumers better recognize and understand the credit transactions when they are disclosed on the Regulation Z periodic statement. The Bureau believes that this is particularly true when a transaction involves situations where the hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds from the asset feature of the consumer's prepaid account, and partially paid with credit from a covered separate credit feature.

As discussed above, a credit transaction will be disclosed as ''sale credit'' on the Regulation Z periodic statement where a consumer uses a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is drawn directly from the covered separate credit feature to cover the amount of the purchase without transferring funds into the asset feature of the prepaid account. New comment 8(a)–9.iii provides for these types of transactions, if a hybrid prepaid-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 from the covered separate credit feature, the amount to be disclosed under final § 1026.8(a) as a ''sale credit' is the amount of the credit extension, not the total amount of the purchase transaction.

For example, again, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature, and $15 of credit is drawn directly from the covered separate credit feature to cover the amount of the purchase without any transfer of funds into the asset feature of the prepaid account. The $15 credit transaction is disclosed as ''sale credit'' on the Regulation Z periodic statement, and the $10 part of the transaction is disclosed on the Regulation E periodic statement under existing Regulation E § 1005.9(b), or alternatively, on the electronic and written account transaction histories pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1).

In this example, because the credit transaction is treated as ''sale credit'' under existing § 1026.8(a), the following information regarding the credit portion of the transaction (the $15 credit portion, in the example above) generally will be disclosed on the Regulation Z periodic statement: (1) The amount of the transaction; (2) the date of the transaction; (3) the merchant's name; and (4) the merchant's location. In this example, as set forth in existing Regulation E § 1005.9(b)(1) and final § 1005.18(c)(3), similar information will be disclosed on the Regulation E periodic statement, or alternatively, the electronic and written account transaction histories regarding the portion of the transaction that involves asset funds ($10 in the above example), namely: (1) The amount of the transaction; (2) the date of the transaction; (3) the merchant's name; and (4) the merchant's location. The Bureau believes that because both parts of the transaction are disclosed consistently on the Regulation Z and Regulation E periodic statements (or on the electronic and written account transaction histories provided to consumers pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1)), a consumer will be better able to match up the two parts of the transaction. Thus, the Bureau does not believe that it is necessary in this case to disclose both portions of the transaction on each periodic statement, as suggested by a consumer group commenter as discussed above.

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 an 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 requested clarification regarding 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 the credit portions to be disclosed as nonsale credit at the creditor's option even though a purchase is involved.[637] As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau is not intending to revise rules in Regulation Z that apply to overdraft plans accessed by debit cards. Nonetheless, for transactions discussed above with respect to covered separate credit features accessible by hybrid prepaid-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 consumers would receive the seller's name, and the city and State or

[637] 46 FR 20848, 20861 (Apr. 7, 1981).

foreign country where the transaction took place.

If the credit transaction were treated as nonsale credit, the consumer would not receive the information about the seller's name and address. As discussed above, 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 hybrid prepaid-credit card is used to obtain goods or services from a merchant, and credit is drawn directly from the covered separate credit feature to cover the amount of the purchase without transferring funds into the asset feature of the prepaid account. As discussed above, the Bureau also notes that under Regulation E, on the periodic statement, or the electronic and written account transaction histories under the periodic statement alternative, a transaction that involves a withdrawal from the prepaid account at point of sale must include the merchant's name and location. Thus, as discussed above, with respect to a single transaction that involves both a withdrawal from the prepaid account and an extension of credit, disclosing such a credit transaction as sale credit 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 transaction history.

On the other hand, as set forth in new comments 8(a)–9.ii and 8(b)–1.vi a credit transaction is disclosed as ''nonsale credit'' under final § 1026.8(b) on the Regulation Z periodic statement where a consumer uses a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is transferred from the covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, again assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $15 will be transferred from the covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account.

In this example, the following information must be disclosed under § 1026.8(b) on the Regulation Z periodic statement with respect to the portion of the transaction that involves credit ($15 in this example): (1) A brief identification of the transaction; (2) the amount of the transaction; and (3) at least one of the following dates: The date of the transaction; the date the transaction was debited to the consumer's account; or if the consumer signed the credit document, the date appearing on the document.

Also, in this example, as set forth in existing Regulation E § 1005.9(b)(1) and final § 1005.18(c)(3), the following information will be given on the Regulation E periodic statement (or alternatively, the electronic and written account transaction histories) regarding the transfer of credit into the asset feature of the prepaid account (the $15 transfer from the covered separate credit feature): (1) The type of transfer and type of account from which funds were transferred; (2) the amount of the transfer; and (3) the date the transfer was credited to the consumer's account. In addition, as set forth in existing Regulation E § 1005.9(b)(1) and final § 1005.18(c)(3), the following information will be provided on the Regulation E periodic statement (or alternatively, the electronic and written account transaction histories) regarding the $25 debit to the asset feature: (1) The amount of the transaction; (2) the date of the transaction; and (3) the merchant's name and location.

The Bureau believes that this information on the Regulation Z and E periodic statements (or alternatively, on the electronic and written account transaction histories pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1)) will allow consumers to understand better the connection between outgoing transfers from covered separate credit features that are shown on the Regulation Z periodic statements and the incoming transfers that are shown on the Regulation E periodic statements (or alternatively, the electronic and written account transaction histories). The Regulation E periodic statement or account transaction histories also will show information about the purchase transaction made with the card. In the example above, the entire amount of the transaction ($25 purchase transaction) will be shown on the Regulation E periodic statement or the account transaction histories.

Transactions that partially involve the purchase of goods or services and partially involves other credit. New comment 8(a)–9.iii also provides that if a transaction is ''sale credit'' as described above, for a transaction at point of sale conducted using a hybrid prepaid-credit card that accesses credit from a covered separate credit feature where the 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.

The Bureau understands that creditors may not be able to identify separately the amount of the credit transaction that 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 better able to recognize credit transactions disclosed on periodic statements, new comment 8(a)–9.iii requires that a creditor disclose the entire amount of the credit transaction as ''sale credit'' under final § 1026.8(a). Under this approach, a creditor must disclose the entire amount of the credit transaction, the date of the transaction, and the merchant's name and location on the Regulation Z periodic statement. The Bureau believes such information is sufficient to allow a consumer to identify a transaction, even where part of the amount of the transaction is 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 merchant's name.

8(b) Nonsale Credit

Existing § 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. Existing 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 have added an additional example to existing comment 8(b)–1 to provide guidance on when credit transactions are ''nonsale credit'' when credit is accessed by a prepaid card that is a credit card. First, proposed comment 8(b)–1.v would have explained 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 have clarified 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 proposed § 1026.8(b) is the amount of the credit extension, not the total amount of the ATM transaction.

The proposal also would have made technical revisions to two comments—existing comment 8(b)–1.ii and existing comment 8(b)–2—which would have provided guidance regarding overdraft credit plans in order to make clear that these comments do not apply to overdraft credit plans related to prepaid accounts.

The Bureau did not receive any specific comments on this aspect of the proposal. The Bureau is adopting new comment 8(b)–1.v as proposed, with revisions to be consistent with new § 1026.61.[638] New comment 8(b)–1.v provides that an advance at an ATM on a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 is an example of nonsale credit under § 1026.8(b). This comment also provides that if a hybrid prepaid-credit card is used to obtain an advance at an ATM and the transaction is partially paid with funds from the asset feature of the prepaid account and partially paid with a credit extension from the covered separate credit feature, the amount to be disclosed under final § 1026.8(b) is the amount of the credit extension, not the total amount of the ATM transaction.

As discussed in more detail in the section-by-section analysis of § 1026.8(a), the Bureau also is adding new comment 8(b)–1.vi to provide that a credit transaction will be disclosed as ''nonsale credit'' under final § 1026.8(b) on the Regulation Z periodic statement where a consumer uses a hybrid prepaid-credit card as defined in new § 1026.61 to make a purchase to obtain goods or services from a merchant, and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase, as described in new comment 8(a)–9.ii. In this scenario, the amount to be disclosed under final § 1026.8(b) is the amount of the credit extension, not the total amount of the purchase transaction.

Consistent with the proposal, the final rule also adopts final comments 8(b)–1.ii and comment 8(b)–2 as proposed with revisions to specify that the term ''prepaid account'' is defined in new § 1026.61.

Section 1026.10 Payments

10(a) General Rule

TILA section 164(a), which is implemented in existing § 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.[639] Existing § 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). Existing comment 10(a)–2 provides guidance on the term ''date of receipt'' as used in existing § 1026.10(a). Specifically, existing 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. Existing comment 10(a)–2.ii provides an example illustrating the date of receipt for payments related to payroll deduction plans. Specifically, existing 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 have amended this comment to reference proposed changes that would have been added to proposed § 1026.12(d)(3) related to the prohibition on offsets. As discussed in more detail in the section-by-section analysis of § 1026.12(d) below, existing § 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, existing § 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 existing § 1026.13(d)(1)). With respect to credit cards that are also prepaid cards, the proposal would have added proposed § 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 that would have been accessed by a prepaid card that is a credit card, a card issuer would have been permitted to 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 have revised existing comment 10(a)–2.ii to explain that proposed § 1026.12(d)(3)(ii) prevents card issuers, with respect to credit card accounts accessed by prepaid cards that are credit cards, 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, payment would have been considered to be 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.

The Bureau did not receive comment on this aspect of the proposal. The

[638] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed comment 8(b)–1.vi would have explained that ''nonsale credit' includes an advance on a credit plan accessed by such an account number. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed comment 8(b)–1.vi related to these account numbers.

[639] 15 U.S.C. 1666c; *see also* 15 U.S.C. 1602(g).

Bureau is adopting revisions to existing comment 10(a)–2.ii as proposed, with technical revisions to clarify the intent of the provision and to be consistent with new § 1026.61.[640] Final comment 10(a)–2.ii explains 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 comment also explains that final § 1026.12(d)(3)(ii) defines ''periodically'' to mean no more frequently than once per calendar month for payments made periodically from a deposit account, such as prepaid account, held by a card issuer to pay credit card debt incurred with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61 that is held by the card issuer. In a payroll deduction plan in which funds are deposited to a prepaid account held by the card issuer, and from which payments are made on a monthly basis to a covered separate credit feature accessible by a hybrid prepaid-credit card that is held by the card issuer, 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. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

10(b) Specific Requirements for Payments

Existing § 1026.10(b) generally sets forth certain rules related to how creditor must handle payments received from consumers. Existing § 1026.10(b)(1) generally provides that a creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments. Nonetheless, existing comment 10(b)–1 explains that a creditor may be prohibited from specifying payment by preauthorized EFT and cross-references EFTA section 913.

As a technical revision, the proposal would have amended this comment to cross-reference Regulation E § 1005.10(e), which implements EFTA section 913. The Bureau did not receive any comments on this proposed revision. Consistent with the proposal, the final rule adopts final comment 10(b)–1 to explain that a creditor may be prohibited from specifying payment by preauthorized EFT and to cross-reference both EFTA section 913 and Regulation E § 1005.10(e).

Section 1026.12 Special Credit Card Provisions

Existing § 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.

12(a) Issuance of Credit Cards

TILA section 132, which is implemented by existing § 1026.12(a), generally prohibits a person 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.[641]

Existing § 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. As discussed in more detail below, the final rule provides guidance on how the prohibition on issuing unsolicited credit cards applies to hybrid prepaid-credit cards that can access covered separate credit features.

12(a)(1) Addition of a Credit Feature

Under the proposal, a prepaid card could not have accessed automatically a credit feature that would make the prepaid card into a credit card at the time the card is purchased by the consumer at point of sale. A card issuer could have added a credit card feature to a prepaid card only in response to a consumer's explicit request or application.

The proposal would have modified existing comment 12(a)(1)–2 specifically to explain that the addition of a credit card feature to an existing prepaid card constitutes ''issuance'' for purposes of unsolicited issuance under existing § 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 have revised existing comment 12(a)(1)–2 to provide guidance relating to prepaid cards. Specifically, proposed comment 12(a)(1)–2 would have provided 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 would have added an example related to prepaid cards. Specifically, the proposal would have added 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 have been moved to proposed comment 12(a)(1)–2.i.

The Bureau did not receive any specific comments on the proposed revisions to existing comment 12(a)(1)–2. The Bureau is adopting comment 12(a)(1)–2 as proposed, with revisions to be consistent with new § 1026.61. Consistent with the proposal, the final rule revises existing comment 12(a)(1)–2 to 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 final rule also moves the existing example related

[640] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. The proposal would have revised comment 10(a)–2.ii to explain that § 1026.12(d)(3)(ii) prevents card issuers, with respect to credit card accounts accessed by such account numbers, 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. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i)above, the final rule does not adopt the proposed changes to comment 10(a)–2.ii related to these account numbers.

[641] 15 U.S.C. 1642.

to check guarantee cards to final comment 12(a)(1)–2.i. The final rule also adds a new example in final comment 12(a)(1)–2.ii to provide that issuance of a credit card includes allowing a prepaid card to access a covered separate credit feature that would make the card into a hybrid prepaid-credit card as defined in new § 1026.61 with respect to the covered separate credit feature. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

Issuance of a Non-Credit Card

Existing 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.[642] The comment states that a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request. Existing 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 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 existing comment 12(a)(1)–7.i and ii would have been moved to proposed comment 12(a)(1)–7.i.A and B respectively and would have been limited to the issuance of non-credit cards that are not prepaid cards. The proposal also would have added 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. Specifically, proposed comment 12(a)(1)–7.ii would have provided that existing § 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) (which has been moved to new § 1026.61(c) in the final rule). As discussed in more detail in the section-by-section analysis of § 1026.61(c) below, the Bureau proposed to add § 1026.12(h) to require a card issuer to wait at least 30 days after the prepaid account has been registered before opening a credit card account for the holder of the prepaid account that will be accessed by the prepaid card, or providing 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 have explained 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 proposed § 1026.12(h).

Proposed comment 12(a)(1)–7.ii further would have explained, however, that an issuer does not make a prepaid card into a credit card simply by providing the disclosures required by proposed Regulation E § 1005.18(b)(2)(i)(B)(*9*) and (ii)(B) with the prepaid card. As discussed in the section-by-section analyses of Regulation E § 1005.18(b)(2)(x) and (4)(vii) above, under the proposal, a financial institution would have been required to provide certain disclosures about credit card accounts that may be offered in connection with prepaid accounts. Under the proposal, a financial institution would have been required to disclose in the short form and long form disclosures provided in connection with the prepaid account certain 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. These disclosures would have enabled consumers to shop more effectively for prepaid accounts by informing them of both whether a credit card account may be offered in connection with the prepaid account and some of the terms of such a credit card account. Proposed comment 12(a)(1)–7.ii would have provided guidance that providing these disclosures would not have violated the rule against unsolicited issuance of a credit card because, otherwise, selling such cards in retail locations or otherwise providing them on an unsolicited basis to consumers would violate Regulation Z if these required disclosures were included with the prepaid card.

The Bureau did not receive any specific comments on proposed comment 12(a)(1)–7.ii. As technical revisions, consistent with the proposal, the final rule moves the current language of existing comment 12(a)(1)–7.i and ii to final comment 12(a)(1)–7.i.A and B respectively and limits this language to the issuance of non-credit cards that are not prepaid cards.

The Bureau also is adopting new comment 12(a)(1)–7.ii as proposed, with revisions to be consistent with new § 1026.61. New comment 12(a)(1)–7.ii provides that existing § 1026.12(a)(1) does not apply to the issuance of a prepaid card where an issuer does not connect the card to any covered separate credit feature that would make the prepaid card into a hybrid prepaid-credit card as defined in § 1026.61 at the time the card is issued and only opens a covered separate credit feature, provides an application or solicitation to open a covered separate credit feature, or allows an existing credit feature to become a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61 in compliance with new § 1026.61(c). As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New comment 12(a)(1)–7.ii also clarifies that a covered separate credit feature may be added to a previously issued prepaid card only upon the consumer's application or specific request and only in compliance with new § 1026.61(c). This comment clarifies that an issuer does not make a prepaid card into a hybrid prepaid-credit card simply by providing the disclosures required by Regulation E

[642] The Bureau notes that a prepaid card is an access device under Regulation E, as that term is defined in existing Regulation E § 1005.2(a)(1), and is subject to the issuance rules set forth in existing Regulation E § 1005.5. See also the commentary to final § 1005.18(a).

§ 1005.18(b)(2)(x), (4)(iv), and (vii) with the prepaid card. In addition, the comment provides a cross-reference to existing § 1026.12(a)(2) and related commentary for when a hybrid prepaid-credit card as defined in § 1026.61 may be issued as a replacement or substitute for another hybrid prepaid-credit card. The comment also provides a cross-reference to existing Regulation E § 1005.5 and final § 1005.18(a), and related commentary, that govern the issuance of access devices under Regulation E.

12(a)(2)

Existing § 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. Existing 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, existing 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. Existing comment 12(a)(2)–6 provides, however, two exceptions to this general ''one for one'' rule. First, existing comment 12(a)(2)–6.i provides that the unsolicited issuance rule in existing § 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) because the latter card could be issued on an unsolicited basis under Regulation E. Existing comment 12(a)(2)–6.ii also provides that existing § 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 existing § 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 existing § 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 have been moved to proposed comment 12(a)(2)–6.iii. The proposal also would have added 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 two cards—one card that is a credit card and another card that is a separate prepaid card, where the latter card is not a credit card. In addition, under the proposal, the example in comment 12(a)(2)–6.i related to debit cards would have been revised for clarity; no substantive changes would have been intended.

The Bureau did not receive comments on the proposed revision to existing comment 12(a)(2)–6. The Bureau is adopting this comment as proposed, with revisions as discussed below. First, the Bureau is revising the example in existing comment 12(a)(2)–6.i related to debit cards for clarity; no substantive changes are intended. Second, the Bureau is moving existing comment 12(a)(2)–6.ii to final comment 12(a)(2)–6.iii.

Third, the Bureau is adopting comment 12(a)(2)–6.ii as proposed with revisions to use consistent terminology with new § 1026.61. Specifically, the Bureau is adding new comment 12(a)(2)–6.ii to provide that the one-for-one rule does not prevent an issuer from replacing a single card that is both a prepaid card and a credit card with two cards—one card that is a credit card and one card that is a separate prepaid card where the latter card is not a hybrid prepaid-credit card as defined in new § 1026.61. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

12(c) Right of Cardholder To Assert Claims or Defenses Against Card Issuer

Under TILA section 170, as implemented in existing § 1026.12(c), 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.[643]

Existing comment 12(c)–3 and existing comment 12(c)(1)–1 provides guidance on the types of transactions that are covered by existing § 1026.12(c) and the types of transactions that are not covered. Existing 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 Bureau's Proposal

The proposal would have amended existing comment 12(c)(1)–1 and added proposed comment 12(c)–5 to explain that existing § 1026.12(c) would apply when goods or services are purchased using a credit card that also is a prepaid card. Proposed comment 12(c)–5 also would have provided guidance on how existing § 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. For these types of transactions, proposed comment 12(c)–5 would have provided that the amount of the purchase transaction that is funded by credit generally would be subject to the requirements of existing § 1026.12(c), and it also would have provided that the amount of the transaction funded from the prepaid account would not be subject to the requirements of § 1026.12(c).

Existing comments 12(c)–3 and 12(c)(1)–1.iv provide that the provisions in existing § 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. Existing comment 12(c)(1)–1.ii also provides that the provisions in existing § 1026.12(c) do not apply to the purchase of goods or services using 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

[643] *See* 15 U.S.C. 1666i.

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.[644] 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 proposal would not have revised these provisions, except to revise existing comment 12(c)(1)–1.ii to specify that the comment does not apply to an overdraft line in connection with a prepaid account.

Comments Received

The Bureau did not receive comments from industry on proposed comments 12(c)(1)–1 and 12(c)–5. With respect to split-tender transactions discussed above, two consumer group commenters urged the Bureau to use its authority under TILA section 105 to extend the claim and defenses provision to the amount of the transaction that is funded from the prepaid account. They believed that doing so would help reduce consumer confusion.

The Final Rule

The Bureau is adopting proposed comments 12(c)(1)–1 and 12(c)–5 with revisions.[645] Consistent with the proposal, final comment 12(c)(1)–1 provides that the provisions in existing § 1026.12(c) apply to property or services purchased with the hybrid prepaid-credit card that accesses a covered separate credit feature, as defined in new § 1026.61. In addition, new comment 12(c)–5 is revised from the proposal to clarify that existing § 1026.12(c) applies to purchases made with a hybrid prepaid-credit card that accesses a covered separate credit feature, regardless of whether the covered separate credit feature is structured such that credit is transferred from the covered separate credit feature to the asset feature of the prepaid account to cover the amount of the purchase transaction made with the hybrid prepaid-credit card, or whether the covered separate credit feature is structured such that credit is directly drawn from the covered separate credit feature to cover the amount of the purchase transaction made with the hybrid prepaid-credit card.

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed in more detail in the section-by-section analysis of § 1026.8(a) above, the Bureau recognizes that a card issuer with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card may structure the credit feature in two ways to cover situations where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time of authorization or settlement to cover the amount of the transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. First, the covered separate credit feature could be structured such that a consumer can use a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is drawn directly from the covered separate credit feature without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature, and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase.

Second, the covered separate credit feature accessible by a hybrid prepaid-credit card could be structured such that when a consumer uses a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, credit is transferred from the covered separate credit feature into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the $15 is transferred from the covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account.

The Bureau is adding new comment 12(c)–5.i to provide that both of these situations would be examples of a consumer using a hybrid prepaid-credit card to access a covered separate credit feature to purchase property or services. This is true even though the latter situation (where credit is transferred from the covered separate credit feature to the asset feature of the prepaid account to cover the amount of the purchase transaction) is disclosed as nonsale credit under final § 1026.8(b).

Consistent with the proposal, the Bureau has not exempted from the provisions of existing § 1026.12(c) credit extended for purchases made with hybrid prepaid-credit cards. For the reasons set forth in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that covered separate credit features that are accessible by hybrid prepaid-credit cards generally should be subject to the provisions in Regulation Z that apply to credit features accessible by credit cards.

Consistent with the proposal, the Bureau also is adding new comment 12(c)–5.ii to provide that for a transaction at point of sale where a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds from the asset feature of the prepaid account and partially paid with credit from the covered separate credit feature, the amount of the purchase transaction that is funded by credit is subject to the requirements of existing § 1026.12(c). The amount of the transaction funded from the prepaid account is not subject to the requirements of existing § 1026.12(c).

With respect to split-tender transactions where a purchase with the hybrid prepaid-credit card is partially paid with funds from the asset feature of the prepaid account and partially paid with credit from the covered separate credit feature, the Bureau is not using its adjustment authority under TILA section 105 to extend the claims and defenses provision in existing § 1026.12(c) to the amount of the transaction that is funded from the asset feature of the prepaid account. In split-tender transactions, the Bureau believes that the provision in existing § 1026.12(c) should only apply to the

[644] 46 FR 20848, 20865 (Apr. 7, 1981); *see also* 46 FR 50288, 50313 (Oct. 9, 1981).

[645] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed 12(c)(1)–1.i would have provided that the provision in § 1026.12(c) would not apply to an advance on a credit plan accessed by such an account number. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 12(c)(1)–1.i related to these account numbers.

amount of the transaction that is paid with credit and is accessed by the hybrid prepaid-credit card when it is acting as a credit card to access the covered separate credit feature.

For the reasons discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau also is retaining the existing exemptions contained in existing comments 12(c)–3 and 12(c)(1)–1.ii and iv related to purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. Existing comments 12(c)–3 and 12(c)(1)–1.iv provide that the provisions in existing § 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. In addition, existing comment 12(c)(1)–1.ii also provides that the provisions in existing § 1026.12(c) do not apply to the purchase of goods or services by using a check accessing an overdraft account and a credit card used solely for identification of the consumer. Consistent with the proposal, the Bureau is revising the example in existing comment 12(c)(1)–1.ii to specify that the comment does not apply to covered separate credit features accessible by hybrid prepaid-credit cards.

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 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.[646] 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.[647] TILA section 169 is implemented by § 1026.12(d).

Existing § 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. Existing § 1026.12(d)(2) provides that the prohibition on offsets in existing § 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: (1) Obtain or enforce a consensual security interest in the funds; (2) attach or otherwise levy upon the funds; or (3) obtain or enforce a court order relating to the funds. Existing § 1026.12(d)(3) provides that the prohibition on offsets set forth in existing § 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 existing § 1026.13(d)(1)).

Congress added the offset provision in TILA section 169 as part of the Fair Credit Billing Act.[648] 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.[649]

12(d)(1) General Rule

Existing § 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 Bureau's Proposal

The proposal would have provided 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. Thus, under the proposal, the offset provision in existing § 1026.12(d) would have applied to credit plans that are accessed by prepaid cards that are credit cards under the proposal. The proposal also would have added proposed comment 12(d)–1 to make clear that for purposes of the prohibition on offsets in existing § 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.

Existing 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 have amended this comment to provide guidance on the tender of funds as a deposit to a prepaid account. Specifically, this comment would have been 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. As a technical revision, the proposal also would have added the title ''General rule'' to existing § 1026.12(d)(1); no substantive change would have been intended by this addition.

Comments Received

Several commenters, including industry trade associations and issuing banks, opposed applying the offset provision to overdrafts on prepaid accounts. One of these commenters indicated that applying the offset provision to overdraft credit features accessed by prepaid cards would deny consumers the ability to access short-term credit in connection with prepaid accounts. Another of these industry commenters believed that when a prepaid account user overdraws his account, the consumer likely intends funds subsequently deposited into the prepaid account to satisfy the overdraft. This industry commenter believed that the offset provision would prevent a consumer from achieving that expected outcome and could mislead prepaid account users into thinking they have more funds available than they actually do. Another of these industry commenters indicated that the offset prohibition would increase the cost of credit to consumers. This commenter indicated that the offset prohibition would make it more difficult for

[646] 15 U.S.C. 1666h(a).

[647] 15 U.S.C. 1666h(b).

[648] Public Law 93–495, 88 Stat. 1500 (Oct. 28, 1974).

[649] S. Rep. No. 93–278, at 9 (June 28, 1973).

creditors to recover debts owed to them. This commenter indicated the longer and more difficult it is for creditors to recover debts, the more costly it is for consumers to access credit.

Several consumer groups supported application of the offset provision to prepaid cards that would have been credit cards under the proposal. One consumer group commenter urged the Bureau to make clear that payroll deduction plans are covered by the offset prohibition.

The Final Rule

Consistent with the proposal, the final rule adds the title ''General rule'' to existing § 1026.12(d)(1); no substantive change is intended. The Bureau also is adopting comments 12(d)–1 and 12(d)(1)–2 as proposed with revisions to refer to § 1026.61 for the definition of ''prepaid account.''

Pursuant to the final rule, the offset prohibition in existing § 1026.12(d) applies to covered separate credit features accessible by hybrid prepaid-credit cards because these credit features are credit card accounts under the final rule.[650] As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed above, several commenters, including industry trade associations and issuing banks, opposed applying the offset provision to overdrafts on prepaid accounts. One of these commenters indicated that applying the offset provision to overdraft credit features accessed by prepaid cards would deny consumers the ability to access short-term credit in connection with prepaid accounts. One industry commenter indicated that the offset prohibition would increase the cost of credit to consumers by making it more difficult for creditors to recover debts owed to them. For the reasons set forth in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that covered separate credit features accessible by hybrid prepaid-credit cards should receive the important protections that apply to credit card accounts generally under Regulation Z, including the offset prohibitions in final § 1026.12(d). The Bureau also believes that additional protections with respect to the offset provision in final § 1026.12(d) are needed with respect to covered separate credit features accessible by hybrid prepaid-credit cards, as discussed in the section-by-section discussion of § 1026.12(d)(2) and (3). The Bureau believes that the requirements in final § 1026.12(d), along with changes to the timing requirement for a periodic statement in final § 1026.5(b)(2)(ii)(A) and the compulsory use provision in Regulation E (final § 1005.10(e)(1)), are important protections that will allow consumers to retain control over the funds in their prepaid accounts if a covered separate credit feature becomes associated with those accounts because they will be able to control when and how debts are repaid.

As discussed above, one industry commenter believed that when a prepaid account user overdraws his account, the consumer likely intends funds subsequently deposited into the prepaid account to satisfy the overdraft. This industry commenter believed that the offset provision would prevent a consumer from achieving that expected outcome and could mislead prepaid account users into thinking they have more funds available than they actually do. The Bureau believes that the Regulation Z account-opening disclosures and periodic statement disclosures, as well as explanations of contractual terms that card issuers typically provide to consumers, will help ensure that consumers understand the terms of their covered separate credit features, including how to make payments on the credit card accounts.

As discussed above, one consumer group commenter urged the Bureau to make clear that payroll deduction plans are covered by the offset prohibition. The Bureau has not added any additional guidance in final § 1026.12(d) or its related commentary regarding the applicability of the offset provision to payroll deduction plans. The Bureau does not believe that special guidance related to payroll deduction plans is necessary. The Bureau believes that under the current offset provision (and the final rule), the offset provision would apply to payroll deductions that are deposited into a consumer's asset account that is held by the credit card issuer. Nonetheless, the offset provision does not apply if the payroll deductions are deposited into a consumer's asset account that is held with the employer or with a person other than the credit card issuer. The offset provision also would not apply to payroll deductions that are used directly to pay a covered separate credit feature that is accessible by a hybrid prepaid-credit card where payroll deduction funds are never deposited into a consumer's asset account with the credit card issuer.

12(d)(2) Rights of the Card Issuer

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 card issuer.[651] 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.[652]

Implementing TILA section 169, existing § 1026.12(d)(2) provides that that the prohibition on offsets in existing § 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. Existing § 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, existing § 1026.12(d)(2) provides that the prohibition on offsets in existing § 1026.12(d)(1) does not alter or affect the right of a card issuer acting under State or Federal law to use either of the following two methods if the same method is constitutionally available to creditors generally: (1) Obtain or enforce a consensual security interest in the funds; or (2) 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.[653] In the supplemental information

[650] The proposal would have provided that the term ''credit card'' includes an account number that is not a prepaid card where that account number accesses a credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The proposal would have applied the offset prohibition in § 1026.12(d) to credit card accounts accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the offset prohibition does not apply to accounts simply because they are accessed by these account numbers because under the final rule, these account numbers are not credit cards.

[651] 15 U.S.C. 1666h(a).

[652] 15 U.S.C. 1666h(b).

[653] 46 FR 20848 (Apr. 7, 1981).

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.[654]

Existing comment 12(d)(2)–1 is intended to ensure that the security interest is consensual. Specifically, existing comment 12(d)(2)–1 provides that 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 existing § 1026.12(d)(2).

For a security interest to qualify for the exception under existing § 1026.12(d)(2), as discussed in existing comment 12(d)(2)–1.i and ii, 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 existing § 1026.12(d)(2).

Current comment 12(d)(2)–1.i provides that indicia of the consumer's awareness and intent to provide a security interest 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 separate 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's Proposal

The proposal would have retained current guidance in comment 12(d)(2)–1.i requiring that 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. The proposal would have moved the current guidance in comment 12(d)(2)–1.i discussing indicia of the consumer's awareness and intent to grant a security interest to proposed comment 12(d)(2)–1.ii and would have amended that comment to indicate that guidance only applies to deposit accounts that are not prepaid accounts. The proposal would have added new comment 12(d)(2)–1.iii discussing indicia of the consumer's awareness and intent to grant a security interest with respect to prepaid accounts. The proposal also would have moved guidance in existing comment 12(d)(2)–1.ii to new proposed comment 12(d)(2)–1.iv; no substantive change would have been intended.

With respect to proposed comment 12(d)(2)–1.iii, the Bureau believed that additional protections may be needed to ensure that consumers understand that they are giving a security interest with respect to credit features that are accessed by prepaid cards that are credit cards. To prevent the security interest from becoming the functional equivalent to an offset, the proposal would have set forth in proposed comment 12(d)(2)–1.iii the steps that card issuers must take to demonstrate a consumer's awareness of and intent to grant a security interest in a prepaid account. Specifically, a card issuer would have been 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.

In addition, as a technical revision, the proposal would have added the title ''Rights of the card issuer'' to § 1026.12(d)(2); no substantive change was intended.

Comments Received

The Bureau solicited comment on the approach discussed above. The Bureau also solicited 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. If these additional protections were not sufficient, the Bureau sought comment on what additional protections would be sufficient to ensure that the security interests taken in prepaid accounts are consensual. Alternatively, the Bureau sought 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 consumer awareness of the security interest.

The Bureau did not receive specific comments from industry commenters on proposed comment 12(d)(2)–1.iii. One consumer group commenter indicated that the Bureau should ban card issuers from taking a security interest in prepaid accounts or require they be established only using a separate account. This commenter believed that even with the proposed safeguards, it would be too easy for a card issuer to obtain the consumer's signature on a

[654] 46 FR 20848, 20866 (Apr. 7, 1981).

document. This commenter indicated that at a minimum, the Bureau should require funds from a prepaid card that would be the security interest to be segregated into a different, separate account that is not a transaction account, such as a savings account. In addition, this commenter indicated that the security interest should be limited to the initial deposit.

The Final Rule

The Bureau is adopting comment 12(d)(2)–1 as proposed with technical revisions to clarify the intent of the provision and with revisions to be consistent with new § 1026.61. Consistent with the proposal, the final rule retains current guidance in 12(d)(2)–1.i requiring that 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. The final rule also moves the current guidance 1.ii and revises this current guidance to clarify the intent of the provision and to provide that it only applies in relation to credit card accounts other than covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61. As discussed in more detail below, the final rule also adds new comment 12(d)(2)–1.iii discussing indicia of the consumer's awareness and intent to provide a security interest in relation to covered separate credit features accessible by hybrid prepaid in comment 12(d)(2)–1.i discussing indicia of the consumer's awareness and intent to provide a security interest to final comment 12(d)(2)—credit cards. The final rule also moves guidance in existing comment 12(d)(2)–1.ii to final comment 12(d)(2)–1.iv; no substantive change is intended. As technical revisions, the final rule adds the title ''Rights of the card issuer'' to § 1026.12(d)(2) and revises the existing language of § 1026.12(d)(2) to use the phrase ''this paragraph (d)'' instead of ''this paragraph''; no substantive change is intended.

As discussed above, the Bureau is adopting new comment 12(d)(2)–1.iii as proposed, with technical revisions to clarify the intent of the provision and with revisions to be consistent with new § 1026.61. Specifically, new comment 12(d)(2)–1.iii provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, for a consumer to show awareness and intent to grant a security interest in a deposit account, including a prepaid account, all of the following conditions must be met: (1) In addition to being disclosed in the issuer's account-opening disclosures under existing § 1026.6, the security agreement must be provided to the consumer in a document separate from the deposit 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 deposit account number, and to a specific amount of funds in the deposit 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.

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes that prepaid account issuers may have significant interest in securing credit card debt on a covered separate credit feature accessible by a hybrid prepaid-credit card by means of the prepaid account. These credit features will always be associated with this linked asset account, and the Bureau believes that prepaid card users who use the cards to obtain consumer credit from a covered separate credit feature are likely to have lower credit scores 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 covered separate credit feature. In addition, these prepaid consumers may have a need to be able to manage their prepaid accounts very carefully to cover both daily expenses and any credit repayments.

With regard to security interests in connection with covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau believes that all of the indicia in new comment 12(d)(2)–2.iii, including delineating a specific dollar amount as being subject to the security interest, will help to ensure that such security interest arrangements do not circumvent the offset provision in TILA section 169 by ensuring that consumers focus careful attention on the consequences of granting security interests so that consumers are better prepared to manage their accounts to both cover daily expenses and repay any credit extensions.

At this time, the Bureau does not believe that it is necessary to ban security interests in prepaid accounts or to provide that a covered separate credit feature accessible by a hybrid prepaid-credit card only can be secured by a separate asset account that is not the prepaid account. The Bureau believes that the protections adopted in the final rule are sufficient to protect consumers from security interests taken in prepaid account with respect to a covered separate credit feature from becoming functional equivalents of offsets, but the Bureau will continue to monitor how providers in the prepaid market use consensual security interests.

12(d)(3) Periodic Deductions

Implementing TILA section 169, existing § 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 existing § 1026.13(d)(1)).

The Bureau's Proposal

Neither TILA section 169 nor existing § 1026.12(d)(3) defines ''periodically'' for purposes of existing § 1026.12(d)(3). The proposal would have added proposed § 1026.12(d)(3)(ii) to provide that with respect to prepaid cards that are credit cards, for purposes of existing § 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 proposed § 1026.7(b)(11)(i)(A) 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 plans accessed by prepaid

card that is a credit card, a card issuer would have been 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. Proposed comment 12(d)(3)–3 would have provided 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 proposed § 1026.12(d)(3) with respect to credit cards that are also prepaid cards. Proposed comment 12(d)(3)–3 would have provided that with respect to those credit cards, a card issuer would not be prohibited under proposed § 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 existing § 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 have provided the following example: With respect to credit cards that are also prepaid cards, 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 have been prohibited under proposed § 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 were pursuant to a plan that was authorized in writing by the cardholder (as discussed in existing comment 12(d)(3)–1) and complied with the limitations in existing § 1026.13(d)(1). Proposed comment 12(d)(3)–3 also would have explained that the card issuer would be prohibited under proposed § 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.

As technical revisions, the proposal also would have: (1) Added the title ''Periodic deductions'' to § 1026.12(d)(3); and (2) moved existing § 1026.12(d)(3) to proposed § 1026.12(d)(3)(i). No substantive changes would have been intended.

Comments Received

One credit union service organization indicated that the Bureau should not adopt the proposed definition of ''periodically.'' This commenter indicated that consumers should have the choice to allow for automatic multiple payments within the same month, like consumers have with other financial products such as traditional credit card programs. This commenter indicated that some consumers may prefer to pay smaller amounts more frequently instead of paying a larger amount once a month.

One consumer group commenter indicated that the preauthorized payment plan exception set forth in existing § 1026.12(d)(3) should not apply to credit features accessed by prepaid cards that are credit cards. Thus, card issuers of those credit features should not be permitted to deduct credit card balances on those credit features from prepaid accounts pursuant to existing § 1026.12(d)(3). Another consumer group commenter indicated that with respect to credit features accessed by prepaid cards that are credit cards, a card issuer should be permitted under proposed § 1026.12(d)(3) to deduct no more than 4 percent of the outstanding balance on a monthly basis from the prepaid account pursuant to the preauthorized payment plan.

One consumer group commenter indicated that the Bureau should make clear that consumers have the right to revoke authorization for a payment plan described in proposed § 1026.12(d)(3). This commenter indicated that consumers should be able to exercise the right to revoke authorization under existing § 1026.12(d)(3) easily, such as in writing, electronically or orally. One consumer group commenter indicated that the Bureau should monitor the process that card issuers use to gain automatic payment authorization to ensure that it is not coercive or misleading so that consumers understand that they have signed up for it.

The Final Rule

As discussed in more detail below, the Bureau is adopting § 1026.12(d)(3) as proposed, with revisions to be consistent with new § 1026.61. Consistent with the proposal, the final rule moves the current language in existing § 1026.12(d)(3) to new § 1026.12(d)(3)(i). The final rule also adds new § 1026.12(d)(3)(ii) and new comment 12(d)(3)–3 as proposed, with revisions to be consistent with new § 1026.61. New § 1026.12(d)(3)(ii) provides that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, for purposes of § 1026.12(d)(3), ''periodically'' means no more frequently than once per calendar month. Thus, under new § 1026.12(d)(3)(ii), with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, a card issuer may deduct all or a part of the cardholder's credit card debt on the covered separate credit feature 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. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed in more detail below, the Bureau also is amending existing comment 12(d)(3)–2 to provide that a card issuer is not prohibited under final § 1026.12(d) from automatically deducting from the consumer's deposit account any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under final § 1026.6(b)(3).

The Bureau also is making three technical revisions to final § 1026.12(d)(3) and related commentary. First, the final rule adds the title ''Periodic deductions'' to § 1026.12(d)(3). Second, the final rule revises the language of existing § 1026.12(d)(3) (renumbered as final § 1026.12(d)(3)(i)) to use the phrase ''this paragraph (d)'' rather than ''this paragraph.'' Third, the final rule revises existing comment 12(d)(3)–1.iii, which references EFTA section 913, to also reference final Regulation E § 1005.10(e), which implements that section of EFTA.

Definition of ''periodically.'' New § 1026.12(d)(3)(ii) provides that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, for purposes of final § 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 final § 1026.7(b)(11)(i)(A) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer. Thus, under final § 1026.12(d)(3), with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, a card issuer may deduct all or a part of the cardholder's credit card debt on the covered separate credit feature 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.[655]

The Bureau also is adopting comment 12(d)(3)–3 as proposed, with revisions to be consistent with new § 1026.61. New comment 12(d)(3)–3 provides that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, a card issuer would not be prohibited under final § 1026.12(d) from periodically deducting all or part of the cardholder's credit card debt on the covered separate credit feature from a deposit account (such as a prepaid account) held with the card issuer (subject to the limitations of existing § 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 more frequently than once per calendar month pursuant to such a plan.

This comment provides the following example: With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, 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 is not prohibited under final § 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 final comment 12(d)(3)–1) and comply with the limitations in existing § 1026.13(d)(1). New comment 12(d)(3)–3 also explains that the card issuer is prohibited under final § 1026.12(d) from automatically deducting all or part of the cardholder's credit card debt on the covered separate credit feature 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 or expected to be made to the deposit account.

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 on a covered separate credit feature accessible by a hybrid prepaid-credit card is appropriate because card issuers of covered separate credit features linked to prepaid accounts generally are restricted 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 analyses of §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) above, for covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan, 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.

The Bureau is concerned that, with respect to covered separate credit features that are accessible by hybrid prepaid-credit cards, 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 the covered separate credit feature 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 final § 1026.12(d)(3), the Bureau believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards may obtain a consumer's written authorization to daily or weekly debits to the prepaid account to repay the credit card debt on the covered separate credit feature given the overall creditworthiness of prepaid accountholders who rely on covered separate credit features. In addition, the Bureau believes prepaid consumers may grant the authorization more readily than other credit cardholders because these consumers may believe that providing such authorization is required.

An appropriate interval for ''periodic[]'' deduction plans may depend on the facts and circumstances of the particular credit feature, but because of the above reasons, the Bureau believes that an appropriate interval for covered separate credit features accessible by hybrid prepaid-credit cards is no more frequently than once per calendar month.

The Bureau believes that the requirement in final § 1026.12(d)(3), along with changes to the timing requirement for a periodic statement in final § 1026.5(b)(2)(ii)(A) and the compulsory use provision in Regulation E (final § 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 covered separate credit feature accessible by a hybrid prepaid-credit card becomes associated with that account, which is consistent with the prohibition on offsets. In particular, with these changes, such card issuers (1) are required to adopt reasonable procedures designed to ensure that periodic statements for covered separate credit features 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) can 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 on covered separate credit features 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) are required to offer consumers a means to repay their outstanding credit balances on covered separate credit features 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).

[655] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. With respect to these account numbers, the proposal would have set forth a new proposed § 1026.12(d)(3)(ii) and comment 12(d)(3)–3 that would have provided that for purposes of the exception for automatic payment plans as discussed in § 1026.12(d)(3), ''periodically'' would have meant no more frequently than once per calendar month. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i)above, the final rule does not adopt the proposed revisions to § 1026.12(d)(3)(ii) and comment 12(d)(3)–3 related to these account numbers.

As discussed above, one credit union service organization indicated that the Bureau should not adopt the proposed definition of ''periodically.'' This commenter indicated that consumers should have the choice to allow for automatic multiple payments within the same month, like consumers have with other financial products such as traditional credit card programs. This commenter indicated that some consumers may prefer to pay smaller amounts more frequently instead of paying a larger amount once a month. The Bureau notes that under existing comment 12(d)(3)–2.ii, a card issuer is not prohibited under the offset provision in § 1026.12(d)(1) from debiting the cardholder's deposit account on the cardholder's specific request rather than on an automatic periodic basis (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill). Thus, under the final rule, a consumer may still provide specific requests for payment more frequently than once per month as described in existing comment 12(d)(3)–2.ii (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill), so long as those payments are not on an automatic periodic basis more frequently than once per month.

In addition, as discussed above, one consumer group commenter indicated that the preauthorized payment plan exception set forth in existing § 1026.12(d)(3) should not apply to credit features accessed by prepaid cards that are credit cards. Thus, card issuers of those credit features should not be permitted to deduct credit card balances on those credit features from prepaid accounts pursuant to existing § 1026.12(d)(3). Another consumer group commenter indicated that with respect to credit features accessed by prepaid cards that are credit cards, a card issuer should be permitted under proposed § 1026.12(d)(3) to deduct no more than 4 percent of the outstanding balance on a monthly basis from the prepaid account pursuant to the preauthorized payment plan. The Bureau does not adopt these additional protections suggested by these commenters at this time. The Bureau believes that the requirement in final § 1026.12(d)(3), along with changes to the timing requirement for a periodic statement in final § 1026.5(b)(2)(ii)(A) and the compulsory use provision in Regulation E (final § 1005.10(e)(1)), provide sufficient protections to consumers to help ensure that consumers retain control over the funds in their prepaid accounts even when a covered separate credit feature accessible by a hybrid prepaid-credit card becomes associated with that account, which is consistent with the prohibition on offsets. The Bureau will continue to monitor the use of automatic payment plans.

Also, as discussed above, one consumer group commenter indicated that the Bureau should make clear that consumers have the right to revoke authorization for a payment plan, described in proposed § 1026.12(d)(3). This commenter indicated that consumers should be able to exercise the right to revoke authorization under existing § 1026.12(d)(3) easily, such as in writing, electronically or orally. Another consumer group commenter indicated that the Bureau should monitor the process that card issuers use to gain automatic payment authorization to ensure that it is not coercive or misleading so that consumers understand that they have signed up for it.

The final rule does not provide specific guidance on how consumers may revoke the authorization provided pursuant to final § 1026.12(d)(3). The Bureau notes that under final § 1026.12(d)(3), the exception from the offset provision for automatic payments only applies to automatic payment plans that are ''authorized'' in writing by the cardholder. At this time, the Bureau believes that State or other applicable law, including UDAAP law, should determine whether an automatic payment plan has been ''authorized'' and when an authorization has been revoked for purposes of final § 1026.12(d)(3). The Bureau will continue to monitor the processes that card issuers use to gain automatic payment authorization and the processes by which consumers can revoke authorization, to ensure that processes provided by card issuers for obtaining authorization are understandable to consumers and that consumers have reasonable methods available to revoke the authorization.

Fees or charges imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan. Existing § 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. Existing comment 12(d)(1)–3 provides that the offset prohibition applies to any indebtedness arising from transactions under a credit card plan, including accrued finance charges and other charges on the account. Existing comment 12(d)(3)–2 provides that § 1026.12(d)(1) does not prohibit a card issuer from automatically deducting charges for participation in a program of banking services (one aspect of which may be a credit card plan).

The Bureau did not propose revisions to existing comments 12(d)(1)–3 or 12(d)(3)–2. Nonetheless, as discussed in more detail below, the Bureau is adopting revisions to comment 12(d)(3)–2 to be consistent with new § 1026.61, changes in the final rule to the definition of ''finance charge'' in final § 1026.4, and the definition of ''charges imposed as part of the plan'' in final § 1026.6(b)(3). To reflect these changes and to facilitate compliance with § 1026.12(d), the Bureau is adding comment 12(d)(3)–2.iii to provide that the offset prohibition in final § 1026.12(d) does not prohibit a card issuer from automatically deducting any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under final § 1026.6(b)(3) from a consumer's deposit account, such a prepaid account, held by the card issuer. This clarification applies to both covered separate credit features accessible by a hybrid prepaid-credit card and non-covered separate credit features that are subject to final § 1026.12(d).[656]

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, new § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer,

[656] With respect to incidental credit that meets the conditions set forth in new § 1026.61(a)(4), new § 1026.61(a)(4)(ii)(C) makes clear that a prepaid account issuer may still satisfy the exception in new § 1026.61(a)(4) even if it debits fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not credit-related fees enumerated in new § 1026.61(a)(4)(ii)(B). New comment 61(a)(4)–1.iv.A states that for this type of credit, the prepaid account issuer is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card.

its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a ''covered separate credit feature.'' Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

Nonetheless, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the provisions in § 1026.12(d) in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account.

As discussed in the section-by-section analysis of § 1026.6(b)(3) above, the Bureau is adding new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1 which provide that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, the term ''charges imposed as part of the plan'' does not include any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11) above, these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii). With respect to a covered separate credit feature, new comment 12(d)(3)–2.iii makes clear that final § 1026.12(d) does not prevent a card issuer from automatically deducting from a consumer's deposit account, such as a prepaid account, held with the card issuer any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges, and thus are not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D), are more appropriately regulated under Regulation E than under Regulation Z with respect to the covered separate credit feature.

The Bureau also is adding new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)–1, which provide that with regard to a non-covered separate credit feature accessible by a prepaid card, as defined in § 1026.61, the term ''charges imposed as part of the plan'' does not include any fee or charge imposed on the asset feature of the prepaid account. New comment 61(b)(3)(iii)(E)–1 also cross-references new comment 4(b)(11)–1.ii.B, which provides that fees or charges imposed on the asset feature of the prepaid account are not finance charges with respect to the non-covered separate credit feature. With respect to a non-covered separate credit feature, new comment 12(d)(3)–2.iii makes clear that final § 1026.12(d) does not prevent a card issuer from automatically deducting from a consumer's deposit account, such as a prepaid account, held with the card issuer any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E) with respect to the non-covered separate credit feature. Because none of the fees or charges imposed on the asset feature of the prepaid account are charges imposed as part of the plan with respect to a non-covered separate credit feature under new § 1026.6(b)(3)(iii)(E), final § 1026.12(d) does not prevent a card issuer from automatically deducting any of these fees or charges from a consumer's deposit account, such as a prepaid account, held with the card issuer. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E rather than Regulation Z with respect to the non-covered separate credit feature.

Section 1026.13 Billing Error Resolution

TILA section 161, as implemented in existing § 1026.13, 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.[657] The written notice triggers a creditor's duty to investigate the claim within prescribed time limits.

13(a) Definition of Billing Error

13(a)(3)

Existing § 1026.13(a) defines a ''billing error'' for purposes of the error resolution procedures. Under existing § 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. Existing comment 13(a)(3)–2 explains that, in certain circumstances, a consumer may assert a billing error under existing § 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.

Proposed § 1026.2(a)(15)(vii) would have provided a definition for ''account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.'' As used in the proposal, this term would have meant 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. Proposed comment 2(a)(15)–2.i.G would have provided that these account numbers were credit cards under the proposal.

Similar to the provision relating to third-party intermediaries, the proposal would have added 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

[657] 15 U.S.C. 1666; *see also* 15 U.S.C. 1602(g).

accounts specified by the creditor. The proposal would have moved the existing guidance in comment 13(a)(3)–2 to proposed 13(a)(3)–2.i.

The Bureau did not receive specific comments on proposed comment 13(a)(3)–2.ii. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i), the Bureau has not adopted proposed § 1026.2(a)(15)(vii) and proposed comment 2(a)(15)–2.i.G that would have made these account numbers into credit cards under Regulation Z. Thus, Bureau has not adopted proposed comment 13(a)(3)–2.ii related to these account numbers.

13(i) Relation to Electronic Fund Transfer Act and Regulation E

Existing § 1026.13(i) provides guidance on whether billing error provisions under Regulation E or Regulation Z apply in certain overdraft-related transactions. Specifically, existing § 1026.13(i) provides that if an extension of credit is incident to an EFT and is 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 existing § 1026.13(a), (b), (c), (e), (f), and (h). The provisions of existing § 1026.13 (d) and (g) would still apply to the credit portion of these transactions.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* 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, existing § 1026.13(i) applies when a transaction is partially funded through an EFT from an asset account and partially funded through an overdraft credit line. Such transactions will be subject to both Regulation Z and E. Under existing § 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 existing § 1026.13(a), (b), (c), (e), (f), and (h). The provisions of existing § 1026.13(d) and (g) would still apply to the credit portion of these transactions. Currently under Regulation Z, with respect to an asset account with a linked overdraft line of credit: (1) if a transaction only accesses the overdraft line of credit and does not access funds in the asset account, the error resolution provisions in Regulation Z apply, and the error resolution provisions in Regulation E do not apply; and (2) if a transaction only accesses the funds in the asset account and does not access the overdraft line of credit, the error resolution provisions in Regulation E apply, and the error resolution provisions in Regulation Z do not apply. In addition, current Regulation Z does not apply to overdraft credit where there is not an agreement to extend credit. As discussed in existing comment 13(i)–2, overdraft transactions made under those overdraft credit programs are governed solely by the error resolution provisions in Regulation E. Existing comment 13(i)–3 provides an example of the application of existing § 1026.13(i) to transactions where a consumer withdraws money at an ATM machine and activates an overdraft line of credit on the checking account.

As discussed in existing comment 13(i)–1, 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.

The Bureau's Proposal

First, the proposal would have moved the existing language of current § 1026.13(i) to proposed § 1026.13(i)(1) and would have revised that language to specify that this provision would apply to asset accounts that are not prepaid accounts. Second, existing comment 13(i)–2 would have been revised to specify that the comment only apply to asset accounts that are not prepaid accounts. Third, existing comment 13(i)–3 would have been revised to specify that the example set forth in that comment only applies to debit cards. Proposed § 1026.2(a)(15)(iv) would have defined ''debit card'' 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'' also would have specified that it does not include a prepaid card.

The proposal would have added proposed § 1026.13(i)(2) to provide that with respect to a credit plan in connection with a prepaid account, a creditor must comply with the requirements of existing Regulation E § 1005.11 governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h) with respect to an extension of credit incident to an EFT when the consumer's prepaid account is overdrawn if the credit plan is subject to subpart B of this regulation. The provisions of existing § 1026.13(d) and (g) would still apply to the credit portion of these transactions.

The proposal also would have added proposed comment 13(i)–4 to provide guidance on how proposed § 1026.13(i)(2) would have applied to credit plans in connection with prepaid accounts. Specifically, proposed comment 13(i)–4 would have provided that for a credit extension involving a credit plan in connection with a prepaid account that is subject to subpart B, when the credit extension is incident to an EFT and occurs when 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 have applied. If the transaction debited a prepaid account only (with no credit extended under the overdraft plan), the provisions of Regulation E would have applied. 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 have been required to comply with the requirements of existing 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).

Proposed comment 13(i)–5 would have explained 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. Under proposed comment 2(a)(15)–2.i.F, a prepaid card would not have been 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. For these types of credit plans, under the proposal, only the error resolution provisions in Regulation E would have applied.

Comments Received and Final Rule

The Bureau did not receive comment on this aspect of the proposal. Consistent with the proposal, the Bureau is adopting § 1026.13(i) as proposed, with several technical revisions to clarify the intent of the provision and to be consistent with new § 1026.61.[658] Consistent with the

[658] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Existing comment 13(i)–1 would have been revised to explain that with respect to a credit account accessed by such an account number, proposed § 1026.13(i) would

proposal, the Bureau is moving existing § 1026.13(i) to new § 1026.13(i)(1) and is revising this language to specify that this provision does not apply to transactions involving prepaid accounts as defined in § 1026.61. In addition, the Bureau is revising existing comment 13(i)–2 to make clear that the comment do not apply to transactions involving prepaid accounts defined in § 1026.61. Consistent with the proposal, the final rule also amends final comment 13(i)–3 to make clear that the example set forth in the comment only applies to debit cards. New § 1026.2(a)(5)(iv) defines ''debit card'' 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 definition of ''debit card'' also specifies that it does not include a prepaid card.

As discussed in more detail below, the Bureau also is adding new § 1026.13(i)(2) to provide guidance on how the error resolution provision in Regulations E and Z apply to transactions with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61. As a technical revision, the Bureau also is revising final § 1026.13(i) to reference the error resolution provisions in both final Regulation E §§ 1005.11 and 1005.18(e) as applicable because the Regulation E error resolution rules that apply to prepaid accounts are set forth in both final §§ 1005.11 and 1005.18(e). Specifically, with respect to covered separate credit features, a creditor must comply with the requirements of final Regulation E §§ 1005.11 and 1005.18(e) governing error resolution rather than those of existing § 1026.13(a), (b), (c), (e), (f), and (h) with respect to an extension of credit incident to an EFT when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction. The provisions of existing § 1026.13(d) and (g) still apply to the credit portions of these transactions. The final rule also is adopting comment 13(i)–4 as proposed with revisions to be consistent with new § 1026.61. The Bureau has revised the guidance in new comment 13(i)–5 to be consistent with new § 1026.61.

not have applied to transfers from that plan to a prepaid account. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed revision to existing comment 13(i)–1 related to these account numbers.

Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau is adding new § 1026.13(i)(2) to provide guidance on how the error resolution provisions in Regulations E and Z apply to transactions with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61. Specifically, with respect to these credit features, a creditor must comply with the requirements of final Regulation E §§ 1005.11 and 1005.18(e) governing error resolution rather than those of existing § 1026.13(a), (b), (c), (e), (f), and (h) with respect to an extension of credit incident to an EFT when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction. The provisions of existing § 1026.13(d) and (g) still apply to the credit portion of these transactions.

In addition, the Bureau is adopting proposed comment 13(i)–4 with revisions to be consistent with new § 1026.61. New comment 13(i)–4 provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, whether Regulation E or Regulation Z applies depends on the nature of the transaction. If the transaction solely involves an extension of credit under a covered separate credit feature and does not access funds from the asset feature of the prepaid account, the error resolution requirements of Regulation Z apply. New comment 13(i)–4.i provides the following example: Assume that there is $0 in the asset feature of the prepaid account, and the consumer makes a $25 transaction with the card. The error resolution requirements of Regulation Z apply to the transaction. New comment 13(i)–4.i provides that this is true regardless of whether the $25 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether the $25 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account to cover the amount of the transaction.

New comment 13(i)–4.ii provides that if the transaction accesses funds from the asset feature of a prepaid account only (with no credit extended under the covered separate credit feature), the provisions of Regulation E apply.

New comment 13(i)–4.iii provides that if the transaction accesses funds from the asset feature of a prepaid account but also involves an extension of credit under the covered separate credit feature, a creditor must comply with the requirements of final Regulation E §§ 1005.11 and 1005.18(e) governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h). New comment 13(i)–4.iii provides the following illustration: Assume that there is $10 in the asset feature of the prepaid account, and the consumer makes a $25 transaction with the card. The error resolution requirements of Regulations E and Z apply as described above to the transaction. New comment 13(i)–4.iii also provides that this is true regardless of whether $10 is debited from the asset feature and $15 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether $15 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account and a $25 transaction is debited from the asset feature to cover the amount of the transaction.

Except with respect to prepaid accounts as defined in § 1026.61, new § 1026.13(i)(1) focuses 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, consistent with current § 1026.13(i). On the other hand, for covered separate credit features accessible by a hybrid prepaid-credit card, new § 1026.13(i)(2) applies if credit is extended under a covered separate credit feature that is accessible by hybrid prepaid-credit card and the transaction involves an extension of credit incident to an EFT when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature. As described in new comment 61(a)(1)–1, a prepaid card can be a hybrid prepaid-credit card under Regulation Z even if, for example, the person that can extend credit does not

agree in writing to extend the credit, the person retains discretion not to extend the credit, or the person does not extend the credit once the consumer has exceeded a certain amount of credit.

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 a covered separate credit feature accessible by the hybrid prepaid-credit card. The Bureau believes that this 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 EFT 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.[659]

An unauthorized EFT on a prepaid account generally would be subject to the limits on liability in existing Regulation E § 1005.6 and final § 1005.18(e); an unauthorized EFT on a prepaid account also is an error for purposes of the error resolution procedures set forth in existing Regulation E § 1005.11(a)(1) and final § 1005.18(e). Although billing errors under existing § 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 a covered separate credit feature accessible by a hybrid prepaid-credit card 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, new § 1026.13(i)(2) requires a creditor to comply with the requirements of final Regulation E §§ 1005.11 and 1005.18(e) governing error resolution, rather than those of § 1026.13(a), (b), (c), (e), (f), and (h), if the transaction debits a prepaid account but also draws on a covered separate credit feature accessible by a hybrid prepaid-credit card. This approach is also consistent with the existing provisions in Regulation E § 1005.12(a)(1)(iv) and Regulation Z § 1026.13(i), which apply Regulation E's liability limitation and error resolution procedures to an extension of credit that is incident to an EFT for overdraft lines of credit accessed by debit cards.

Credit Features That Are Not Accessible by a Hybrid Prepaid-Credit Card

As discussed above, proposed comment 13(i)–5 would have explained 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. Under proposed comment 2(a)(15)–2.i.F, a prepaid card would not have been 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. For these types of credit plans, under the proposal, only the error resolution provisions in Regulation E would have applied.

The Bureau did not receive any specific comment on proposed comment 13(i)–5. The Bureau has revised the guidance in new comment 13(i)–5 to be consistent with new § 1026.61 and with revisions to Regulation E § 1005.12(a).

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

New comment 13(i)–5 explains that Regulation E § 1005.12(a)(1)(iv)(C) and (D), and (2)(iii) provide guidance on whether error resolution procedures in Regulations E or Z apply to transactions involving credit features that are accessed by prepaid cards that are not hybrid prepaid-credit cards as defined in § 1026.61. New Regulation E § 1005.12(a)(1)(iv)(C) provides that with respect to transactions that involve credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in § 1026.61(a)(4), these transactions are governed solely by error resolution procedures in Regulation E, and Regulation Z does not apply. New Regulation E § 1005.12(a)(1)(iv)(D) and (2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in § 1026.61, a financial institution must comply with Regulation E's error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable.

The Bureau notes that overdraft credit features that are exempt under new § 1026.61(a)(4) would not be subject to final § 1026.13(i) because these credit features are not accessible by hybrid prepaid-credit cards and are not subject to Regulation Z generally (including § 1026.13).

A non-covered separate credit feature may be subject to the provisions in § 1026.13 generally in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account. Nonetheless, even if § 1026.13 generally is applicable to a non-covered separate credit feature, final § 1026.13(i) will not be applicable to the credit feature. Instead, the prepaid account issuer must comply with Regulation E with respect to the transactions on the prepaid account, and the creditor must comply with Regulation Z with respect to the non-covered separate credit feature. The Bureau believes that it is appropriate that a non-related third-party creditor must comply only with Regulation Z error resolution procedures with respect to the non-covered separate credit feature even if the credit feature functions as an overdraft credit feature

[659] 15 U.S.C. 1693g(c).

because this creditor may not know that its credit feature is being used as an overdraft credit feature in relation to the prepaid account.

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

Except for existing § 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 existing § 1026.2(a)(7), that extends credit under a ''credit card account under an open-end (not home-secured) consumer credit plan,'' as defined in existing § 1026.2(a)(15)(ii).[660] Among other things, subpart G contains provisions to implement the Credit CARD Act that:

- Prohibit 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.[661]
- Restrict the amount of required fees that an issuer can charge during the first year after an account is opened.[662]
- Limit the amount card issuers can charge for ''back-end'' penalty fees, such as when a consumer makes a late payment or exceeds his or her credit limit.[663]
- Ban ''declined transaction fees'' and other penalty fees where there is no cost to the card issuer associated with the violation of the account agreement.[664]
- Restrict the circumstances under which card issuers can increase interest rates and certain fees on credit card accounts and establish procedures for doing so.[665]
- 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.[666]
- Require institutions of higher education to publicly disclose agreements with card issuers and limit the marketing of credit cards on or near college campuses.[667]

In addition, subpart G also contains existing § 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.

The Bureau is adding a new § 1026.61 which defines when a prepaid card is a credit card under Regulation Z (using the term ''hybrid prepaid-credit card''). As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a ''covered separate credit feature.'' Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

New § 1026.61(c) (moved from § 1026.12(h) in the proposal) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under new § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

As discussed in the section-by-section analysis of § 1026.2(a)(20) above, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of ''open-end credit'' and that credit will not be home-secured. See the section-by-section analysis of the definition of ''credit'' in final § 1026.2(a)(14), the definition of ''open-end-credit'' in final § 1026.2(a)(20), and the definition of ''finance charge'' in final § 1026.4. In addition, as discussed in the section-by-section analyses of § 1026.2(a)(7), (15)(i), and (ii) above, a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) credit plan is a ''credit card account under an open-end (not home-secured) consumer credit plan,'' and the person issuing the hybrid prepaid-credit card (and its affiliate or business partner if that entity is offering the covered separate credit feature accessible by the hybrid prepaid-credit card) are ''card issuers.'' As a result, pursuant to the final rule, provisions in subpart G generally will apply to covered separate credit features accessible by hybrid

[660] 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 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.

[661] § 1026.51.

[662] § 1026.52(a)(1).

[663] § 1026.52(b)(1).

[664] § 1026.52(b)(2).

[665] §§ 1026.55 and 1026.59.

[666] § 1026.56.

[667] § 1026.57.

prepaid-credit cards that are open-end (not home-secured) credit plans.[668]

As discussed in more detail below, the Bureau is amending commentary to the following provisions to provide guidance on how certain provisions in subpart G would apply to covered separate credit features accessible by hybrid prepaid-credit cards that are open-end (not home-secured) credit plans:[669]

(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;

(3) Section 1026.55(a), which restricts the circumstances under which card issuers can increase interest rates and certain fees on credit card accounts; and

(4) Section 1026.57, which limits the marketing of credit cards to college students.[670]

The final rule also provides 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 covered separate credit features accessible by hybrid prepaid-credit cards.

The final rule also provides guidance on how provisions in existing § 1026.52(a) and (b), and in existing §§ 1026.55 and 1026.60, apply to non-covered separate credit features that are accessible by prepaid cards as defined by new § 1026.61. A non-covered separate credit feature may be subject to the provisions in § 1026.52(a) and (b), and in existing §§ 1026.55 and 1026.60, in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account. The final rule provides that with respect to such non-covered separate credit features, the provisions in existing § 1026.52(a) and (b), and in existing §§ 1026.55 and 1026.60, do not apply to fees or charges imposed on a prepaid account in relation to non-covered separate credit features.

Section 1026.52 Limitations on Fees

52(a) Limitations During First Year After Account Opening

52(a)(1) General Rule

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 existing § 1026.52(a). Specifically, existing § 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. Under existing § 1026.52(a)(2), fees not subject to the 25 percent restriction are late payment fees, over-the-limit fees, returned-payment fees, or fees that the consumer is not required to pay with respect to the account. Existing comment 52(a)(1)–1 provides that the 25 percent limit in existing § 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).

The proposal would have amended existing comment 52(a)(1)–1 to add a prepaid account as an example of a consumer's asset account. Thus, under the proposal, for a credit card account under an open-end (not home-secured) consumer credit plan that is accessed by a prepaid card that is a credit card, the 25 percent limit in existing § 1026.52(a)(1) would have applied to fees that the card issuer charges to the credit card 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). Proposed comment 52(a)(1)–1.iii and iv would have added two new examples to existing comment 52(a)(1)–1 to illustrate how the prohibition in existing § 1026.52(a) would have applied to credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by prepaid cards that are credit cards.

One industry trade association indicated that the Bureau should not apply the 25 percent cap to fees imposed for overdrafts on prepaid accounts or should include broader exemptions for fees (such as for cash advance fees) that are more appropriately tailored for prepaid account usage. This commenter believed that the 25 percent cap on fees imposed during the first year the credit card account is opened will likely make it cost-prohibitive for issuers to provide overdraft and other credit features.

Several consumer group commenters indicated that the restriction in existing § 1026.52(a) should be expanded to apply beyond the first year after a credit feature accessed by a prepaid card that is a credit card is opened. One of the consumer groups indicated that in the alternative, the rule could state that any increase in the credit limit under a credit feature accessed by a prepaid card that is a credit card constitutes a new credit agreement and results in another year where fees cannot exceed 25 percent of the credit limit. This commenter indicated that without this safeguard, a card issuer could offer a very small amount of credit free of charge for a year, and then increase the credit limit after the first year while charging any fees it wishes, potentially causing cardholders serious harm.

Several consumer group commenters also indicated that the restriction in existing § 1026.52(a) should apply to fees that are charged by the card issuer

[668] A person would not be extending open-end credit where the covered separate credit feature accessed by the hybrid prepaid-credit card does not meet the definition of ''open-end credit,'' such as when a finance charge is not imposed in connection with the credit feature. See the section-by-section analysis of § 1026.2(a)(20) above.

[669] One commenter asked the Bureau to provide specific guidance in the commentary to § 1026.51 that modeled income may be used with respect to credit card accounts accessed by prepaid cards that are credit cards to meet the requirements set forth in § 1026.51. The Bureau notes that existing comment 51(a)(1)(i)–5.iv provides that for purposes of § 1026.51(a), a card issuer may consider the consumer's current or reasonably expected income and assets based on information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets, including any income or assets to which the consumer has a reasonable expectation of access. The Bureau notes that this existing guidance in comment 51(a)(1)(i)–5.iv applies to covered separate credit features accessible by hybrid prepaid-credit cards that are subject to § 1026.51. The Bureau does not believe that additional guidance is needed with respect to these credit features.

[670] The *Overview of the Final Rule's Amendments to Regulation Z* section above describes some of the benefits from these regulations for prepaid account consumers.

for the credit feature prior to the credit feature being opened.

The Bureau sought 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 sought 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. One consumer group commenter also indicated that with respect to a credit feature accessed by prepaid cards that are credit cards, card issuers should be required to disclose to consumers the credit limit that will apply to the credit feature. This commenter indicated that consumers should not have to guess at their credit limits. This commenter indicated that the restrictions in existing § 1026.52(a) cannot fully protect consumers unless they know what their credit limit is and can check to see if fees exceed 25 percent of that limit.

As discussed below, consistent with the proposal, existing § 1026.52(a) applies to a covered separate credit feature accessible by a hybrid prepaid-credit card that is a ''credit card account under an open-end (not home-secured) consumer credit plan,'' as that term is defined in final § 1026.2(a)(15)(ii). As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

In addition, the Bureau is adopting revisions to existing comment 52(a)(1)–1 consistent with the proposal with a technical revision to refer to § 1026.61 for the definition of ''prepaid account.'' Also, the Bureau is adopting the examples in proposed comment 52(a)(1)–1.iii and iv as proposed, with several technical revisions to clarify the intent of the examples and to be consistent with new § 1026.61.

With respect to covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau has not expanded the scope of the restriction in existing § 1026.52(a) to apply this restriction beyond the first year the credit feature is opened, or to apply to fees that are charged prior to account opening. In addition, the Bureau has not provided that that any increase in the credit limit under a credit feature accessible by a hybrid prepaid-credit card constitutes a new credit agreement and results in another year where fees cannot exceed 25 percent of the credit limit. Also, the Bureau has not exempted additional credit-related fees (such as for cash advance fees) from the restriction in existing § 1026.52(a), as requested by one industry commenter as discussed above. The Bureau believes that existing § 1026.52(a) should apply to covered separate credit features accessible by hybrid prepaid-credit cards in similar circumstances in which it applies to other credit card accounts that are subject to that restriction.

The Bureau also has not required card issuers to disclose credit limits on covered separate credit features accessible by hybrid prepaid-credit cards. For customer-service reasons and other reasons, credit card issuers typically disclose the credit limits applicable to credit card accounts to consumers even though that disclosure is not specifically required by TILA and Regulation Z. For similar reasons, the Bureau believes that card issuers that are providing covered separate credit features accessible by hybrid prepaid-credit cards will have an incentive to disclose the credit limits on these credit features as well. For these reasons, the Bureau at this time does not believe that it is necessary under Regulation Z to require that card issuers providing covered separate credit features accessible by hybrid prepaid-credit cards must disclose a credit limit with respect to these credit features.

52(a)(2) Fees Not Subject to Limitations

Existing § 1026.52(a)(2) provides that the 25 percent restriction does not apply to late payment fees, over-the-limit fees, 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 existing § 1026.52(a)(2), existing § 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 existing § 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's Proposal

The proposal would have moved current comments 52(a)(2)–2 and –3 to proposed comments 52(a)(2)–4 and –5, respectively with no intended substantive change. The Bureau proposed to add new comment 52(a)(2)–2 that would have provided 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 would have provided that except as provided in existing § 1026.52(a)(2), existing § 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, these fees would have included, but would not have been 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.

The proposal also would have revised the section heading to § 1026.52(a) 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 would have been intended.

Comments Received

One consumer group commenter indicated that the Bureau should clarify that ''load'' fees are included for purposes of the 25 percent restriction, even if they are charged to the prepaid account. This commenter indicated that transfer fees and a load fees are essentially the same thing and the card issuer should not be allowed to evade the restriction in existing § 1026.52(a) by charging the fees to the prepaid account.

The Final Rule

In the final rule, the Bureau is moving existing comments 52(a)(2)–2 and –3 to final comments 52(a)(2)–4 and –5 respectively; no substantive change is intended. In addition, the section heading to § 1026.52(a) is 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. As discussed in more detail below, the Bureau is adding new comments 52(a)(2)–2 and –3 to provide guidance on how § 1026.52(a) applies to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as defined in § 1026.61 that are subject to § 1026.52(a).[671]

Covered separate credit features accessible by hybrid prepaid-credit cards. The Bureau is revising proposed comment 52(a)(2)–2 from the proposal to be consistent with new § 1026.61. New comment 52(a)(2)–2 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, final § 1026.52(a) applies to the following fees: (1) Except as provided in § 1026.52(a)(2), any fee or charge imposed on the covered separate credit feature, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay in connection with the credit feature; and (2) except as provided in existing § 1026.52(a)(2), any fee or charge imposed on the asset feature of the prepaid account (other than a charge attributable to a periodic interest rate) during the first year after account opening that the card issuer will or may require the consumer to pay where that fee or charge is a charge imposed as part of the plan under final § 1026.6(b)(3). As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed in more detail in the section-by-section analysis of § 1026.6 above, with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, a fee or charge imposed on the asset feature of the prepaid account is a ''charge imposed as part of the plan'' under final § 1026.6(b)(3) to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. This fee or charge also is a finance charge under new § 1026.4(b)(11)(ii).

The Bureau believes that the restriction on fees set forth in TILA section 127(n)(1), as implemented in existing § 1026.52(a), provides important protections for consumers, particularly in the context of covered separate credit features accessible by hybrid prepaid-credit cards. As discussed above, a covered separate credit feature accessible by a hybrid prepaid-credit card under new § 1026.61(a)(2)(ii) includes an overdraft credit feature offered by prepaid account issuer, its affiliate, or its business partner in connection with a prepaid account. In this case, the covered separate credit feature accessible by a hybrid prepaid-credit card is designed to provide liquidity to the prepaid account. As discussed above, except as provided in existing § 1026.52(a)(2), with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, the restriction in final § 1026.52(a) applies to fees or charges imposed on the covered separate credit feature accessible by a hybrid prepaid-credit card, as well as fees or charges imposed on the asset feature of the prepaid account when those fees are ''charges imposed as part of the plan'' under final § 1026.6(b)(3).

Although the Bureau believes that issuers will generally assess credit-related fees on the covered separate credit feature, TILA section 127(n)(1) applies to ''any fees,'' with some exceptions, that the consumer is required to pay under the terms of a credit card account under an open-end consumer credit plan. That term readily encompasses credit-related fees that are imposed on the asset feature of the prepaid account because it speaks to what the fees relate to, not where they are placed. Even if the term were ambiguous, the Bureau believes—based on its expertise and experience with respect to credit card markets—that interpreting it to encompass credit-related fees imposed on the asset feature would promote the purposes of TILA to protect the consumer against inaccurate and unfair credit billing and credit card practices. The Bureau believes that from the consumer's perspective, there is no practical difference between a fee charged against the covered separate credit feature and a credit-related fee charged to the asset feature of the prepaid account in order to access credit because both functionally reduce the total amount of credit available to the consumer through the covered separate credit feature accessible by the hybrid prepaid-credit card until such fees are paid. If TILA section 127(n)(1) were not interpreted to include credit-related fees charged across any linked accounts, the Bureau is concerned that card issuers could hide non-exempt fees by imposing them on the asset feature of the prepaid account or by creating separate artificially distinct credit accounts and attempting to collect the non-exempt fees from those linked credit accounts.

The Bureau also is adding new comment 52(a)(2)–3 to provide that final § 1026.52(a) does not apply to any fee or

[671] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed comment 52(a)(2)–3 would have provided an additional example 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 such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i), the final rule does not adopt proposed comment 52(a)(2)–3 related to these account numbers.

charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. The Bureau notes that under new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1, with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, a fee or charge imposed on the asset feature of the prepaid account is not a ''charge imposed as part of the plan'' with respect to the covered separate credit feature to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11)(ii), these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii). As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges (and thus, not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D)) with respect to the covered separate credit feature are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the covered separate credit feature.

As discussed above, one consumer group commenter indicated that the Bureau should clarify that ''load'' fees are included for purposes of the 25 percent restriction, even if they are charged to the prepaid account. As discussed in the section-by-section analysis of § 1026.4(b)(11)(ii) above, new comment 4(b)(11)(ii)–1 sets forth the circumstances in which load or transfer fees imposed on the asset feature of the prepaid account are finance charges under new § 1026.4(b)(11)(ii). To the extent that a load fee or transfer fee that is imposed on the asset feature of a prepaid account is a finance charge under new § 1026.4(b)(11)(ii), that load or transfer fee is subject to the 25 percent restriction under § 1026.52(a) because those fees would be ''charges imposed as part of the plan'' under final § 1026.6(b)(3).

Non-covered separate credit features. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the provisions in § 1026.52(a) in its own right.

With respect to such non-covered separate credit features that are subject to § 1026.52(a), new comment 52(a)(2)–3 also provides that final § 1026.52(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E) with respect to the non-covered separate credit feature. Under new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)–1, with respect to a non-covered separate credit feature that is accessible by a prepaid card as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are ''charges imposed as part of the plan'' under final § 1026.6(b)(3) with respect to the non-covered separate credit feature. New comment 6(b)(3)(iii)(E)–1 also cross-references new comment 4(b)(11)–1.ii.B, which provides that none of the fees or charges imposed on the asset feature of the prepaid account are finance charges under final § 1026.4 with respect to the non-covered separate credit feature. Thus, final § 1026.52(a) does not apply to any fees or charges imposed on the asset feature of the prepaid account with respect to the non-covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the non-covered separate credit feature.

52(b) Limitations on Penalty Fees

TILA section 149(a) provides that the 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.[672] TILA section 149(e) provides that the Bureau, in consultation with certain agencies, 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.[673]

Implementing TILA section 149, existing § 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 existing § 1026.52(b)(1)(i) or the safe harbors in existing § 1026.52(b)(1)(ii); and (2) does not exceed the dollar amount associated with the violation in accordance with existing § 1026.52(b)(2)(i). Under existing § 1026.52(b)(2)(ii), 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.

As discussed in the section-by-section analysis of § 1026.52(b)(2)(i)(B) below, the Bureau proposed guidance on declined transaction fees in relation to credit card accounts under an open-end (not home-secured) consumer credit plan accessed by prepaid cards that would have been credit cards under the proposal. These declined transaction fees are discussed in more detail in the section-by-section analysis of § 1026.52(b)(2)(i)(B) below.

The Bureau did not propose any other additional guidance in relation to § 1026.52(b) with respect to credit card accounts under an open-end (not home-secured) consumer credit plan accessed by prepaid cards that would have been credit cards under the proposal. Nonetheless, the Bureau believes that additional guidance is needed with respect to the restrictions on penalty fees contained in final § 1026.52(b) given the changes in the final rule to the definition of ''finance charge'' in final § 1026.4, and the definition of ''charges imposed as part of the plan'' in final § 1026.6(b)(3), and the addition of new § 1026.61.

[672] 15 U.S.C. 1665d(a).

[673] 15 U.S.C. 1665d(e).

As discussed in more detail below, the final rule adds new comment 52(b)–3 to provide guidance on how the restrictions in final § 1026.52(b) generally apply to fees or charges imposed in connection with covered separate credit features accessible by hybrid prepaid-credit cards, as defined in new § 1026.61, where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. The final rule also adds new comment 52(b)–4 to provide that the restrictions in final § 1026.52(b) do not apply to fees or charges imposed on the asset feature of the prepaid account with respect to covered separate credit features accessible by hybrid prepaid-credit cards when the fees or charges are not ''charges imposed as part of the plan'' under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. Comment 52(b)–4 also provides that the restrictions in final § 1026.52(b) do not apply to fees or charges imposed on the asset feature of a prepaid account with respect to non-covered separate credit features.

In addition, in the proposal, the Bureau solicited comment on issues related to fees imposed by card issuers when preauthorized payments are returned unpaid. Specifically, the Bureau solicited 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. The Bureau solicited comment on: (1) How credit card 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; (2) whether 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 were not paid by the due date; and (3) whether the Bureau should adopt any specific rules to address these issues, and if so, what rules should the Bureau adopt.

The proposal included this request for comment in the discussion of the offset prohibition in proposed § 1026.12(d). With respect to credit card accounts accessed by prepaid cards that would have been credit cards under the proposal, proposed § 1026.12(d)(3) would have allowed an exception for certain preauthorized payment plans to the offset prohibition in proposed § 1026.12(d)(1). In response to this request for comment, several consumer group commenters indicated that the Bureau should adopt additional restrictions in § 1026.52(b) related to the circumstances in which card issuers can charge fees when preauthorized payments are returned unpaid and/or related to the amount of the fees. As discussed in more detail below, one consumer group commenter indicated that the Bureau should prohibit these fees under § 1026.52(b). Several consumer group commenters indicated that the Bureau should adopt additional restrictions in § 1026.52(b) limiting the circumstances in which these fees can be charged and limiting the amount of the fees.

As discussed in the section-by-section analysis of § 1026.12(d)(3) above, respect to covered separate credit features accessible by hybrid prepaid-credit cards, as defined in new § 1026.61, final § 1026.12(d)(3) sets forth an exception for certain preauthorized payment plans with respect to the offset prohibition in final § 1026.12(d). As discussed in more detail below, the restrictions in existing § 1026.52(b) related to returned payment fees apply to fees that are imposed by card issuers when preauthorized payments are returned unpaid. The Bureau does not believe that additional restrictions are needed at this time under final § 1026.52(b) with respect to the circumstances in which these fees can be charged or the amount of the fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards.

General Guidance

Covered separate credit features accessible by hybrid prepaid-credit cards. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. To reflect this change and to ensure compliance with the restrictions in § 1026.52(b), new comment 52(b)–3 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, final § 1026.52(b) applies to any fee for violating the terms or other requirements of the credit feature, regardless of whether those fees are imposed on the credit feature or on the asset feature of the prepaid account. For example, assume that a late fee will be imposed by the card issuer if the separate credit feature becomes delinquent or if a payment is not received by a particular date. This fee is subject to final § 1026.52(b) regardless of whether the fee is imposed on the asset feature of the prepaid account or on the covered separate credit feature.

The Bureau believes that the restriction on penalty fees set forth in TILA section 149(a), and implemented in existing § 1026.52(b), provides important protections for consumers, particularly in the context of covered separate credit features accessible by hybrid prepaid-credit cards. Covered separate credit features accessible by hybrid prepaid-credit cards are designed to provide liquidity to the prepaid account.

As described above, new comment 52(b)–3 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b) applies to any fee for violating the terms or other requirements of the credit feature, regardless of whether those fees are imposed on the credit feature or on the asset feature of the prepaid account. TILA section 149(a) applies to 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. Those terms readily encompass credit-related fees that are imposed on the asset feature of the prepaid account. Even if the terms were ambiguous, the Bureau believes—based on its expertise and experience with respect to credit markets—that interpreting them to encompass credit-related fees imposed on the asset feature would promote the purposes of TILA to protect the consumer against inaccurate and unfair credit billing and credit card practices. From the consumer's perspective, there is no practical difference when a penalty fee for a violation of the covered separate credit feature is charged against the covered separate credit feature and when it is charged to the asset feature of the prepaid account. If TILA section 149(a)

were not interpreted to include penalty fees for violations of the covered separate credit feature charged to the asset feature, the Bureau is concerned that card issuers could avoid the restrictions set forth in TILA section 149(a) and final § 1026.52(b) with respect to these fees simply by imposing them on the asset feature of the prepaid account.

In addition, to facilitate compliance with final § 1026.52(b), new comment 52(b)–4 provides that final § 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to a covered separate credit feature. As discussed above, the Bureau believes this additional guidance is needed given the changes in the final rule to the definition of ''finance charge'' in final § 1026.4, the definition of ''charges imposed as part of the plan'' in final § 1026.6(b)(3), and the addition of new § 1026.61.

As discussed in more detail in the section-by-section analysis of § 1026.6 above, with respect to a fee or charge imposed on the asset feature of a prepaid account accessible by a hybrid prepaid-credit card, a fee or charge imposed on the asset feature of the prepaid account is a ''charge imposed as part of the plan'' under final § 1026.6(b)(3) to the extent that the amount of the fee or charges exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. This fee or charge also is a finance charge under new § 1026.4(b)(11)(ii).

Nonetheless, under new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1, with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, a fee or charge imposed on the asset feature of the prepaid account is not a ''charge imposed as part of the plan'' with respect to the covered separate credit feature to the extent that the amount of the fee or charges does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11)(ii) above, these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii).

As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges (and thus, not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D)) with respect to the covered separate credit feature are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the covered separate credit feature. Thus, new comment 52(b)–4 provides that final § 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature.

Non-covered separate credit features. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the provisions in § 1026.52(b) in its own right.

With respect to non-covered separate credit features that are subject to final § 1026.52(b), new comment 52(b)–4 also provides that final § 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E) with respect to a non-covered separate credit feature. Under new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)–1, with respect to a non-covered separate credit feature as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are ''charges imposed as part of the plan'' under final § 1026.6(b)(3) with respect to the non-covered separate credit feature. New comment 6(b)(3)(iii)(E)–1 also cross-references new comment 4(b)(11)–1.ii.B, which provides that none of the fees or charges imposed on the asset feature of the prepaid account are finance charges under final § 1026.4 with respect to the non-covered separate credit feature. Thus, final § 1026.52(b) does not apply to fees or charges imposed on the asset feature of the prepaid account with respect to the non-covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the non-covered separate credit feature.

Fees for Preauthorized Payments That Are Returned Unpaid

As discussed above, in the proposal, the Bureau solicited 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. The Bureau solicited comment on: (1) How credit card 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; (2) whether 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; and (3) whether the Bureau should adopt any specific rules to address these issues, and if so, what rules should the Bureau adopt.

The proposal included this request for comment in the discussion of the offset prohibition in proposed § 1026.12(d). With respect to credit card accounts accessed by prepaid cards that would have been credit cards under the proposal, proposed § 1026.12(d)(3) would have allowed an exception for certain preauthorized payment plans to the offset prohibition in proposed § 1026.12(d)(1). In response to this request for comment, several consumer group commenters indicated that the Bureau should adopt additional restrictions in § 1026.52(b) related to the circumstances in which card issuers can charge fees when preauthorized payments are returned unpaid and/or related to the amount of the fees. One consumer group commenter indicated that the Bureau should adopt rules to cover the situation where the consumer authorizes periodic deductions, but there is not enough money to cover a payment when due. In particular, this commenter indicated the Bureau should

prohibit fees that are imposed by card issuers when preauthorized payments are returned unpaid under existing § 1026.52(b)(2)(i)(B)(*1*) as a ''declined transaction fee.'' Existing § 1026.52(b)(2)(i)(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 when there is no dollar amount associated with the violation. Existing § 1026.52(b)(2)(i)(B)(*1*) provides that there is no dollar amount associated with transactions that the card issuer declines to authorize, and thus fees charged for those declined transactions are prohibited under existing § 1026.52(b)(2)(i)(B).

In the alternative, this commenter indicated that the Bureau should use its authority to establish ''additional requirements'' to provide for a ''right to cure'' period for the limited circumstance of prepaid consumers who have authorized automatic deductions to repay credit associated with their prepaid card. This commenter indicated that the Bureau should require the card issuer to provide a limited time period, such as one week, to add funds to the prepaid account before a penalty fee under § 1026.52(b) could be imposed. In that case, any penalty fees would be subject to the limitations of existing § 1026.52(b), namely, that the fee amount (1) must be consistent with either the cost analysis in existing § 1026.52(b)(1)(i) or the safe harbors in existing § 1026.52(b)(1)(ii); and (2) does not exceed the dollar amount associated with the violation under existing § 1026.52(b)(2)(i). In addition, under existing § 1026.52(b)(2)(ii), a card issuer could 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.

Another consumer group commenter indicated that if the prepaid account does not have enough funds to satisfy a requested transfer or a preauthorized payment, the Bureau should provide some kind of cushion where consumers could avoid a fee if the debt obligation falls below a certain threshold—*i.e.,* less than $20—and that no fee should be greater than the minimum 4 percent repayment amount and/or the overdraft service charge.

As discussed in the section-by-section analysis of § 1026.12(d)(3) above, with respect to covered separate credit features accessible by hybrid prepaid-credit cards, as defined in § 1026.61, final § 1026.12(d)(3) sets forth an exception for certain preauthorized payment plans with respect to the offset prohibition in final § 1026.12(d). The Bureau does not believe that fees imposed by card issuers when preauthorized payments are returned unpaid are fees for declined transactions under § 1026.52(b)(2)(i)(B)(*1*). The Bureau believes that it is clear under existing comment 52(b)–1.i.B that fees imposed by card issuers when preauthorized payments are returned unpaid constitute fees for returned payments and are regulated as returned payment fees under § 1026.52(b)(1), (2)(i)(A), and (2)(ii). Specifically, existing comment 52(b)(1)–i.B provides that the limitations in § 1026.52(b) apply to returned payment fees and any other fees imposed by a card issuer if a payment initiated via check, ACH, or other payment method is returned. Existing commentary to § 1026.52(b)(1), (2)(i)(A), and (2)(ii) provide guidance on how the restrictions in existing § 1026.52(b)(1), (2)(i)(A) and (2)(ii) apply to returned payment fees. *See, e.g.,* comments 52(b)(1)(i)–7, 52(b)(1)(ii)–1.i.B, 52(b)(1)(ii)–1.iii.C, 52(b)(2)(i)–2, and 52(b)(2)(ii)–1.ii, iii and v through vii. For example, § 1026.52(b)(1), and (b)(2)(i)(A) and related commentary restrict the amount of the fee that a card issuer can impose for a returned payment. In addition, if a payment has been returned and is submitted again for payment by the card issuer, comment 52(b)(2)(i)–2 provides that there is no additional dollar amount associated with a subsequent return of that payment and a card issuer is prohibited from imposing an additional returned payment fee. Also, comment 52(b)(2)(ii)–1.ii.A and B provide that a card issuer is prohibited from assessing both a late payment fee and a returned payment fee based on a single event or transaction. The existing restrictions in § 1026.52(b)(1), (2)(i)(A), and (2)(ii), and related commentary regarding returned payment fees apply to fees imposed by card issuers when preauthorized payments are returned unpaid in connection with covered separate credit features accessible by hybrid prepaid-credit cards, as defined in § 1026.61, that are subject to § 1026.52(b).

The Bureau has not established additional requirements beyond those contained in § 1026.52(b)(1), (2)(i)(A), and (2)(ii) and related commentary regarding returned payment fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards, such as a right to cure period for prepaid consumers where preauthorized payments have been returned unpaid. At this time, the Bureau believes that the fee restrictions that apply generally to credit card accounts in existing § 1026.52(b)(1), (2)(i)(A), and (2)(ii) and related commentary with respect to returned payments are sufficient to protect consumers with respect to the circumstances in which card issuer can impose fees for preauthorized payments that are returned unpaid in connection with covered separate credit features accessible by hybrid prepaid-credit cards. The Bureau will continue to monitor whether additional safeguards are needed.

52(b)(2) Prohibited Fees

52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation

52(b)(2)(i)(B) No Dollar Amount Associated With Violation

Existing § 1026.52(b)(2)(i)(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 when there is no dollar amount associated with the violation. Existing § 1026.52(b)(2)(i)(B)(*1*) through (*3*), respectively, 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's Proposal

The Bureau proposed to add comment 52(b)(2)(i)–7, which would have provided guidance on when the ban on declined transaction fees in existing § 1026.52(b)(2)(i)(B)(*1*) would apply in the context of prepaid accounts. Specifically, this proposed comment would have provided that existing § 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. Finally, the proposed comment would have provided 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 existing § 1026.52(b)(2)(i)(B)(*1*).

Comments Received

The Bureau requested 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. Several consumer group commenters indicated that the Bureau should prohibit declined transaction fees on prepaid accounts generally. One of these consumer group commenters indicated that it could be confusing to determine whether a declined transaction would have accessed the prepaid account or a credit feature. This commenter believed that these fees are unfair penalty fees, especially if they exceed the cost (if any) to the prepaid account issuer of the declined transaction.

Also, as discussed in more detail below, several consumer groups requested that the Bureau adopt additional protections under § 1026.52(b) with respect to credit card accounts that are accessed by prepaid cards that are credit cards. For example, one consumer group commenter indicated that the Bureau should clarify that the following two types of fees are penalty fees prohibited under existing § 1026.52(b)(2)(i)(B) because no dollar amount is associated with the violation: (1) Fees for placing a stop payment on preauthorized transfers; and (2) legal process fees. Another consumer group commenter indicated that any expenditure not associated with a purchase transaction should not be able to trigger an overdraft fee.

The Final Rule

As discussed in more detail below, the final rule adopts new comment 52(b)(2)(i)–7 as proposed with revisions to be consistent with new § 1026.61. New comment 52(b)(2)(i)–7 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, § 1026.52(b)(2)(i)(B)(*1*) prohibits declined transaction fees from being imposed in connection with the covered separate credit feature, regardless of whether the declined transaction fee is imposed on the credit feature or on the asset feature of the prepaid account.

Also, as discussed above and in more detail below, several consumer groups requested that the Bureau adopt additional protections under § 1026.52(b) with respect to credit card accounts that are accessed by prepaid cards that are credit cards. As discussed in more detail below, the Bureau has not adopted such restrictions in final § 1026.52(b) or related commentary in relation to covered separate credit features accessible by hybrid prepaid-credit cards.

Declined transaction fees. As discussed above, the Bureau proposed to add comment 52(b)(2)(i)–7, which would have provided guidance on when the ban on declined transaction fees in existing § 1026.52(b)(2)(i)(B)(*1*) would apply in the context of prepaid accounts. Specifically, this proposed comment would have provided that existing § 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. Finally, the proposed comment would have provided 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 existing § 1026.52(b)(2)(i)(B)(*1*).

The Bureau requested comment on whether, once a credit card account has been added to a prepaid card, the Bureau 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. Several consumer group commenters indicated that the Bureau should prohibit declined transaction fees on prepaid accounts generally. One of these consumer group commenters indicated that it could be confusing to determine whether a declined transaction would have accessed the prepaid account or a credit feature. This commenter believed that these fees are unfair penalty fees, especially if they exceed the cost (if any) to the prepaid account issuer of the declined transaction.

The Bureau is adopting proposed comment 52(b)(2)(i)–7 with revisions to reflect terminology consistent with new § 1026.61.[674] New comment 52(b)(2)(i)–7 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b)(2)(i)(B)(*1*) prohibits card issuers from imposing declined transaction fees in connection with the covered separate credit feature, regardless of whether the declined transaction fee is imposed on the credit feature or on the asset feature of the prepaid account. For example, if the hybrid prepaid-credit card attempts to access credit from the covered separate credit feature and the transaction is declined, existing § 1026.52(b)(2)(i)(B)(*1*) prohibits the card issuer from imposing a declined transaction fee, regardless of whether the fee is imposed on the credit feature or on the asset feature of the prepaid account. Fees imposed for declining a transaction that would have only accessed the asset feature of the prepaid account and would not have accessed the covered separate credit feature accessible by the hybrid prepaid-credit card are not covered by existing § 1026.52(b)(2)(i)(B)(*1*).

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes that a fee for declining a transaction where the prepaid account issuer attempts to access credit from the covered separate credit feature accessible by the hybrid prepaid-credit card and the transaction is declined is no different than a fee for declining a credit card transaction, which is prohibited by current § 1026.52(b)(2)(i)(B)(*1*). Thus, such a declined transaction fee is prohibited by final § 1026.52(b)(2)(i)(B)(*1*), regardless of whether the fee is imposed on the credit feature or on the asset feature of the prepaid account.

As discussed above, several consumer group commenters indicated that the Bureau should prohibit declined transaction fees on prepaid accounts generally. One of these consumer group commenters indicated that it could be confusing to determine whether a declined transaction would have accessed the prepaid account or a credit feature. This commenter believed that these fees are unfair penalty fees, especially if they exceed the cost (if any) to the prepaid account issuer of the declined transaction. Consistent with

[674] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed comment 52(b)(2)(i)–7 would have provided that the prohibition in § 1026.52(b)(2)(i)(B)(*1*) applies to declined transaction fees imposed on credit card accounts accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 52(b)(2)(i)–7 related to these account numbers.

the proposal, new comment 52(b)(2)(i)–7 makes clear that fees imposed for declining a transaction that would have only accessed the asset feature of the prepaid account and would not have accessed the covered separate credit feature accessible by the hybrid prepaid-credit card are not covered by final § 1026.52(b)(2)(i)(B)(*1*). The Bureau does not believe that it is appropriate to apply final § 1026.52(b)(2)(i)(B)(*1*) to fees for declined transactions that would not have accessed the covered separate credit feature accessible by the hybrid prepaid-credit card because fees for those declined transactions are not directly related to credit.[675]

Stop payment fees and legal process fees. As discussed above, one consumer group commenter indicated that the Bureau should clarify that the following two types of fees are penalty fees prohibited under existing § 1026.52(b)(2)(i)(B) because no dollar amount is associated with the violation: (1) Fees for placing a stop payment on preauthorized transfers; and (2) legal process fees. The Bureau does not believe it is appropriate at this time to include these clarifications because these requirements are beyond the scope of the proposal, and the Bureau has not collected information about whether there are costs for prepaid account issuers related to the circumstances in which these fees are charged.

Restriction on overdraft fees. As indicated above, one consumer group commenter indicated that any expenditure not associated with a purchase transaction should not be able to trigger an overdraft fee. This commenter indicated that a consumer should never be charged an overdraft fee because the consumer incurred another fee that caused the overdraft. The commenter suggested that the general principle should be that prepaid account issuers should never be able to charge an overdraft fee of any kind if the issuer has not extended a payment to a third party.

[675] As discussed above, certain commenters indicated that declined transaction fees should be prohibited on prepaid accounts generally or should be deemed unfair penalty fees, irrespective of when there is a credit feature in connection with the prepaid account. The Bureau believes such changes are outside the scope of the proposal, and does not make the change at this time. However, the Bureau continues to monitor such fees generally and whether any practices raise concerns. The Bureau further notes, however, that although the Board did not address declined transaction fees in its 2009 rulemaking addressing overdraft services, the Board noted in response to comments received that such fees could raise significant fairness issues under the FTC Act, because the institution bears little, if any, risk or cost to decline authorization of an ATM or one-time debit card transaction. *See* 74 FR 59033, 59041 (Nov. 17, 2009).

The Bureau has not adopted a restriction on imposing credit-related fees on a credit extension from a covered separate credit feature unless the credit extension is for a purchase transaction. The requirement is beyond the scope of the proposal. In addition, as discussed above and in the section-by-section analysis of § 1026.52(a), the Bureau notes that the provisions in § 1026.52(a) and (b) apply to credit-related fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards, as applicable.

Section 1026.55 Limitations on Increasing Annual Percentage Rates, Fees, and Charges

TILA section 171(a) generally prohibits creditors from increasing any APR, fee, or finance charge applicable to any outstanding balance on a credit card account under an open-end consumer credit plan, with some exceptions.[676] TILA section 172 provides that a creditor generally cannot increase a rate, fee, or finance charge during the first year after account opening and that a promotional rate generally cannot expire earlier than six months.[677]

TILA sections 171 and 172 are implemented in existing § 1026.55. Existing § 1026.55(a) provides that except as provided in existing § 1026.55(b), a card issuer must not increase an APR or a fee or charge required to be disclosed under existing § 1026.6(b)(2)(ii), (iii), or (xii) on a credit card account under an open-end (not home-secured) consumer credit plan.

The Bureau did not propose changes to § 1026.55 or related commentary. Nonetheless, the Bureau believes that additional guidance is needed with respect to the restrictions in final § 1026.55 given the changes in the final rule to the definition of ''finance charge'' in final § 1026.4, the definition of ''charges imposed as part of the plan'' in final § 1026.6(b)(3), and the addition of new § 1026.61.

As discussed in more detail below, the final rule adds new comment 55(a)–3 to provide guidance on how the restrictions in final § 1026.55 generally apply to fees or charges imposed in connection with covered separate credit features accessible by hybrid prepaid-credit cards, as defined in new § 1026.61, where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. The final rule also adds new comment 55(a)–4 to provide that the restrictions in final § 1026.55 do not apply to fees or charges imposed on the asset feature of the prepaid account with respect to covered separate credit features accessible by hybrid prepaid-credit cards when the fees or charges are not ''charges imposed as part of the plan'' under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. New comment 55(a)–4 also provides that final § 1026.55 does not apply to fees or charges imposed on the asset feature of a prepaid account with respect to a non-covered separate credit feature.

[676] *See* 15 U.S.C. 1666i–1.

[677] *See* 15 U.S.C. 1666i–2.

Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. Given this change and to ensure compliance with § 1026.55, the Bureau is adding new comment 55(a)–3 to provide guidance on when fees or charges imposed in connection with covered separate credit features are subject to the restrictions in existing § 1026.55. New comment 55(a)–3 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, final § 1026.55(a) prohibits card issuers from increasing an APR or any fee or charge required to be disclosed under existing § 1026.6(b)(2)(ii), (iii), or (xii) on a credit card account unless specifically permitted by one of the exceptions in existing § 1026.55(b). This is true regardless of whether these fees or APRs are imposed on the asset feature of the prepaid account or on the credit feature.

TILA section 171 and 172 apply, respectively, to any APR, fee, or finance charge applicable to any outstanding balance and to any APR, fee, or finance charge on any credit card account under

an open-end consumer credit plan. Those terms readily encompass credit-related fees that are imposed on the asset feature of the prepaid account. Even if the terms were ambiguous, the Bureau believes—based on its expertise and experience with respect to credit markets—that interpreting them to encompass credit-related fees imposed on the asset feature would promote the purposes of TILA to protect the consumer against inaccurate and unfair credit billing and credit card practices. From the consumer's perspective, there is no practical difference when an APR or any fee or charge described in existing § 1026.55(a) imposed in connection with a covered separate credit feature is charged against the separate credit feature and when it is charged to the asset feature of the prepaid account. If TILA sections 171 and 172 were not interpreted to include APRs or fees or charges described in existing § 1026.55(a) in connection to the covered separate credit feature when those fees or charges are imposed on the asset feature, the Bureau is concerned that card issuers could avoid the restrictions set forth in TILA sections 171 and 172 and § 1026.55(a) with respect to these fees or charges simply by imposing them on the asset feature of the prepaid account.

New comment 55(a)–4 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, final § 1026.55(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. As discussed in more detail in the section-by-section analysis of § 1026.6 above, with respect to a fee or charge imposed on the asset feature of a prepaid account accessible by a hybrid prepaid-credit card, a fee or charge imposed on the asset feature of the prepaid account is a ''charge imposed as part of the plan'' to the extent that the amount of the fee or charges exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. This fee or charge also is a finance charge under new § 1026.4(b)(11)(ii).

Under new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1, a fee or charge imposed on the asset feature of the prepaid account is not a ''charge imposed as part of the plan'' to the extent that the amount of the fee or charges does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. These fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii) in relation to the covered separate credit feature. The Bureau believes that this guidance facilitates compliance with final § 1026.55(a) by providing additional clarity to card issuers on how the restrictions in final § 1026.55(a) apply to fees or charges imposed on the asset feature of the prepaid account accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges (and thus, not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D)) with respect to the covered separate credit feature are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the covered separate credit feature.

Non-Covered Separate Credit Features

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the provisions in § 1026.55 in its own right.

With respect to non-covered separate credit features that are subject to § 1026.55, new comment 55(a)–4 provides that final § 1026.55 does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E). The Bureau notes that under new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)–1, with respect to a non-covered separate credit feature as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are ''charges imposed as part of the plan'' under final § 1026.6(b)(3) with respect to the non-covered separate credit feature. New comment 6(b)(3)(iii)(E)–1 also cross-references new comment 4(b)(11)–1.ii.B which provides that none of the fees or charges imposed on the asset feature of the prepaid account are finance charges under final § 1026.4 with respect to the non-covered separate credit feature. Thus, final § 1026.55 does not apply to any fees or charges imposed on the asset feature of the prepaid account with respect to the non-covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the non-covered separate credit feature.

Section 1026.57 Reporting and Marketing Rules for College Student Open-End Credit

57(a) Definitions

TILA section 127(r) requires creditors 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.[678] This TILA section is implemented by existing § 1026.57(d), which 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.

Existing § 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. Existing § 1026.57(a)(1) defines ''college student credit card'' as used in the term ''college credit card agreement'' 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.

[678] 15 U.S.C. 1637(r).

The Bureau's Proposal

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 agreement.'' The proposal would have amended this comment to include a prepaid card that is a credit card 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 have provided 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.

Existing comment 57(a)(5)–1 provides guidance on the definition of ''college credit card agreement.'' The proposal would have amended this comment to include guidance on when an agreement related to a prepaid account would be considered a ''college credit card agreement.'' Proposed comment 57(a)(5)–1 would have provided that the definition of ''college credit card agreement'' 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. Proposed comment 57(a)(5)–1 also would have provided that the definition of ''college credit card agreement'' 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.

Comments Received and the Final Rule

The Bureau did not receive any comment on this aspect of the proposal. The Bureau is adopting proposed comments 57(a)(1)–1 and 57(a)(5)–1 with technical revisions to clarify the intent of the comments, and to be consistent with new § 1026.61.[679] Final comment 57(a)(1)–1 provides that the definition of ''college student credit card'' includes a hybrid prepaid-credit card as defined by new § 1026.61 that is issued to any college student where the card accesses a covered separate credit feature that is 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 as defined in § 1026.61 that is issued to any college student where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan may be added in the future to the prepaid account. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

Final comment 57(a)(5)–1 provides that the definition of ''college credit card agreement'' 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 a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card to prepaid accounts previously issued to full-time or part-time students. 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 as defined in § 1026.61 to full-time or part-time students; and (2) a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan may be added in the future to the prepaid account.

Pursuant to the Bureau's amendments to commentary, final § 1026.57(d) requires a card issuer that is a party to one or more college credit card agreements in connection with covered separate credit features accessible by hybrid prepaid-credit cards to submit annual reports to the Bureau regarding those agreements. In addition, a card issuer is required to submit agreements that provide for the issuance of prepaid accounts to full-time or part-time students even if a covered separate credit feature is not linked to the prepaid account when the prepaid accounts are issued, so long as such credit features may be added in connection with the prepaid accounts.

As discussed in more detail in the section-by-section analysis of § 1026.61(c) below, new § 1026.61(c) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card. Thus, a prepaid card in connection with a prepaid account cannot access a covered separate credit feature at the time the prepaid account is opened. Nonetheless, the Bureau believes that the marketing efforts related to a prepaid account, including the inducements given by a card issuer to open a prepaid account, have an impact on whether consumers may request that a covered separate credit feature accessible by a hybrid prepaid-credit card be linked to the prepaid account when such covered separate credit features are offered to them. Thus, even though a prepaid account will not have a covered separate credit feature linked to it at the time the prepaid account is opened, if a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card may be linked to a prepaid account as described above in the future, the prepaid account at the time of issuance

[679] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. The proposal would have provided in comments 57(a)(1)–1 and 57(a)(5)–1 guidance on the definitions of ''college student credit card'' and ''college credit card agreement'' related to credit card accounts that are accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comments 57(a)(1)–1 and 57(a)(5)–1 related to these account numbers.

would be a ''college student credit card'' for purposes of final § 1026.57(a)(1) if the prepaid account is issued to a college student. As a result, under the final rule, 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 covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card may be added in connection with the prepaid account.

The Bureau believes it is necessary and proper to exercise its adjustment authority under TILA section 105(a), to apply section 127(r)'s requirements for college card agreements to prepaid cards where covered separate credit features that are credit card accounts under an open-end (not home-secured) consumer credit plan accessible by hybrid prepaid-credit cards may subsequently be added, to further the purposes of TILA. The provisions in TILA section 127(r) addressing college credit cards reflect Congress's particular concern with providing special protections for students to ensure that students can make informed credit decisions, and the Bureau believes that including such cards is consistent with such congressional concerns for college students and credit card debt. Further, these concerns might be heightened with respect to prepaid accounts to which covered separate credit features that are credit card accounts under an open-end (not home-secured) consumer credit plan accessible by hybrid prepaid-credit cards may be linked because students might be prone to use such prepaid accounts as their primary transaction account.

57(b) Public Disclosure of Agreements

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.[680] This TILA provision is implemented by existing § 1026.57(b), which 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 proposed comment 57(b)–3 to explain that existing § 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 prepaid accounts previously 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 (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. Thus, under proposed § 1026.57(b), an institution of higher education would have been required to publicly disclose such agreements.

One consumer group commenter indicated that it is not enough to require an institution of higher education to offer a disclosure on marketing agreements with card issuers. This commenter believed that the Bureau should specifically require that these disclosures be made available on the institution's Web site. This commenter believed that these disclosures should be available on the same screen as the application for the card and would disclose the dollar amount received by the institution and any terms associated with those fees. The commenter believed that these terms should be listed in English and Spanish.

The Bureau is adopting proposed comment 57(b)–3 as proposed with technical revisions to clarify the intent of the comment and to be consistent with new § 1026.61.[681] Under the final rule, new comment 57(b)–3 provides that existing § 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 a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan to prepaid accounts as defined in § 1026.61 that were previously issued to full-time or part-time students; or (2) new prepaid accounts where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan may in the future be added to the prepaid account. Thus, under § 1026.57(b), an institution of higher education must publicly disclose such agreements.

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes it is necessary and proper to exercise its adjustment authority under TILA section 105(a) to effectuate the purposes of TILA by applying section 140(f)'s requirements for college card agreements to prepaid cards where covered separate credit features that are credit card accounts under an open-end (not home-secured) consumer credit plan accessible by hybrid prepaid-credit cards may subsequently be added. The provisions in TILA section 140(f) addressing college card agreements reflect Congress's particular concern with providing special protections for students to ensure that students can make informed credit decisions, and the Bureau believes that including such cards is consistent with such congressional concerns for college students and credit card debt. The Bureau believes that the marketing efforts related to a prepaid account, including the inducements given by a card issuer to open a prepaid account, may have an impact on whether consumers may request that a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by hybrid prepaid-credit card be linked to the prepaid account, as discussed above, when such covered separate credit features are offered to them. Thus, the Bureau believes that the marketing related to a prepaid account where a covered separate credit feature accessible by a hybrid prepaid-credit card may be added would constitute marketing of a credit card. Thus, under the final rule, an institution of higher education must publicly disclose agreements for the marketing of prepaid accounts where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit

[680] 15 U.S.C. 1650(f)(1).

[681] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. The proposal would have provided in comment 57(b)–3 that institutions of higher education must disclose marketing agreements related to credit card accounts accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 57(b)–3 related to these account numbers.

card may be added in connection with the prepaid account.

As discussed above, one consumer group commenter indicated that it is not enough to require an institution of higher education to offer a disclosure related to marketing agreements with card issuers. This commenter believed that the Bureau should specifically require that these disclosures be made available on the institution's Web site. This commenter believed that these disclosures should be available on the same screen as the application for the card and disclose the dollar amount received by the institution and any terms associated with those fees. The commenter believed that these terms should be listed in English and Spanish.

The final rule does not impose additional requirements on institutions of higher education to disclose marketing agreements. The Bureau believes such changes are outside the scope of the proposal and does not make the change at this time. The Bureau notes that existing comment 1026.57(b)–1 provides that institutions of higher education may comply with the requirement in existing § 1026.57(b) by publishing any relevant credit card agreement on their Web site or by making such agreements available free of charge upon request using reasonable procedures and in a reasonable timeframe. In addition, the Bureau sent a warning letter in December 2015 to several institutions of higher education because their agreements were not posted on their Web sites and could not be publicly obtained by the Bureau using reasonable procedures and in a reasonable timeframe.[682] In the letter, the Bureau noted that publishing the agreement on the Web site is proving to be the least burdensome and most straightforward means of complying with § 1026.57(b), and that any other approach may be less effective and creates compliance risk.

57(c) Prohibited Inducements

TILA section 140(f)(2) provides that no card 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.[683] This TILA provision is implemented in existing § 1026.57(c), which 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 proposed to add comment 57(c)–7 to explain that existing § 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 (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.

The Bureau did not receive comments on this aspect of the proposal. The Bureau is adopting proposed comment 57(c)–7 with revisions to be consistent with new § 1026.61.[684] New comment 57(c)–7 provides that final § 1026.57(c) applies to (1) the application for or opening of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 that is being added to a prepaid account as defined as § 1026.61 previously issued to a full-time or part-time student as well as (2) the application for or opening of a prepaid account where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 may be added in the future to the prepaid account. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes that the marketing efforts related to a prepaid account, including the inducements given by a card issuer to open a prepaid account, may have an impact on whether consumers may request that a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card be linked to the prepaid account, as discussed above, when such covered separate credit features are offered to them. Thus, any tangible item given to induce college students to apply for or open a prepaid account where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card may be added in connection with the prepaid account would also be interpreted as an inducement to encourage a college student to apply for or open such a covered separate credit feature in connection with the prepaid account. As a result, under final § 1026.57(c), a card issuer or creditor would be prohibited from offering a college student any tangible item to induce the student to apply for or open a prepaid account offered by the card issuer or creditor where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card may be added in connection with the prepaid account, if the 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 existing § 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 final rule, the Bureau is adopting similar provisions

[682] *See* Press Release, CFPB, *CFPB Warns Colleges About Secret Campus Credit Card Contracts* (Dec. 16, 2015), *available at http://www.consumerfinance.gov/about-us/newsroom/cfpb-warns-colleges-about-secret-campus-credit-card-contracts/*.

[683] 15 U.S.C. 1650(f)(2).

[684] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. The proposal would have provided in comment 57(c)–7 guidance on how the prohibition in § 1026.57(c) applies to credit card accounts that are accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 57(c)–7 related to these account numbers.

for prepaid accounts in final Regulation E § 1005.19. Although the Bureau is not revising § 1026.58, it notes that the requirements of § 1026.58 and those of Regulation E § 1005.19 are distinct and independent of one another. In other words, issuers must comply with both as appropriate. The Bureau notes, however, that it does not believe it is likely that any agreement will constitute both a credit card agreement and a prepaid account agreement and thus be required to be submitted under both § 1026.58 and Regulation E § 1005.19. Given the requirement in new § 1026.61(b) that credit features accessible by hybrid prepaid-credit cards generally must be structured as separate subaccounts or accounts distinct from the prepaid asset account, in conjunction with the account-opening disclosure requirements in existing § 1026.6 and the initial disclosure requirements in existing Regulation E § 1005.7(b) as well as final § 1005.18(f)(1), the Bureau believes it is unlikely that an issuer would use a single agreement to provide all such disclosures for both a prepaid account and for a covered separate credit feature.

The Bureau reminds credit card issuers that while final Regulation E § 1005.19(f) provides a delayed effective date of October 1, 2018 to submit prepaid account agreements to the Bureau, the requirement to submit credit card agreements for covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan becomes effective with the rest of this final rule on October 1, 2017.

Section 1026.60 Credit and Charge Card Applications and Solicitations

TILA section 127(c) generally requires card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account.[685] This TILA provision is implemented by § 1026.60.

Existing comment 60–1 provides 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. The existing comment also cross-references § 1026.60(a)(5) and (e)(2) for exceptions, § 1026.60(a)(1) and accompanying commentary for the definition of solicitation, and § 1026.2(a)(15) and accompanying commentary for the definition of charge card. The proposal would have amended existing comment 60–1 to cross-reference proposed § 1026.12(h) (renumbered as new § 1026.61(c) in the final rule) for restrictions on when credit or charge card accounts can be added to previously issued prepaid accounts.

The Bureau did not receive any specific comments on the proposed revisions to comment 60–1. Consistent with the proposal, the final rule adopts final comment 60–1 with revisions to be consistent with new § 1026.61. The final rule revises comment 60–1 to provide a cross-reference to new § 1026.61(c) for restrictions on when credit or charge card accounts can be added to previously issued prepaid accounts. See the section-by-section analysis of § 1026.61(c) below for a discussion of these restrictions.

60(a) General Rules

60(a)(5) Exceptions

Existing § 1026.60(a)(5) provides several exceptions to the requirements in existing § 1026.60 to provide cost disclosures on or with credit or charge card applications or solicitations. Specifically, existing § 1026.60(a)(5) provides that existing § 1026.60 does not apply to: (1) Home-equity plans accessible by a credit or charge card that are subject to the requirements of existing § 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 ATMs; (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,[686] 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 existing 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 ATMs.[687] 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.[688] 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.[689]

In 1990, the Board added commentary to its Regulation Z § 226.5a (now existing § 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; (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.[690] In the supplemental information to the 1990 rulemaking, the Board did not explain why it was including these exemptions.

As discussed above, existing § 1026.60(a)(5)(iv) currently provides that the disclosure requirements in existing § 1026.60 do not apply to lines of credit accessed solely by account numbers. The proposal would have amended existing § 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. Under the proposal, these account numbers would have been credit cards. Thus, under the proposal, a card issuer would have been required to provide the disclosures required by existing § 1026.60 on or with a solicitation or application to open a credit or charge card account that would have been 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 did not receive any comments on proposed

[685] 15 U.S.C. 1637(c).

[686] Public Law 100–583, 102 Stat. 2960.

[687] 54 FR 13855, 13857 (Apr. 6, 1989).

[688] *Id.*

[689] *Id.*

[690] *See* 55 FR 13103, 13107 (Apr. 9, 1990).

§ 1026.60(a)(5)(iv). As discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i) above, the Bureau is not adopting proposed § 1026.2(a)(15)(vii) and proposed comment 2(a)(15)–2.i.G, which would have made these account numbers into credit cards under Regulation Z.

Nonetheless, the Bureau is revising the proposed changes to § 1026.60(a)(5)(iv) to refer to an account number that is a hybrid prepaid-credit card, rather than an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Specifically, the Bureau is revising the exemption in existing § 1026.60(a)(5)(iv) that relates to lines of credit accessed solely by account numbers so that this exception would not apply to a covered separate credit feature solely accessible by an account number that is a hybrid prepaid-credit card, as defined in new § 1026.61.

The Bureau noted in the proposal that a card issuer generally would be required to provide the cost disclosures in existing § 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. Consistent with the intent of the proposal, the Bureau is revising the exemption in existing § 1026.60(a)(5)(iv) to make clear that the cost disclosures in existing § 1026.60 must be provided on or with solicitations or applications to open a covered separate credit feature accessible by a hybrid prepaid-credit card even when that hybrid prepaid-credit card is solely an account number.

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau does not believe that it is appropriate to except a covered separate credit feature accessible by a hybrid prepaid-credit card that is solely an account number from the disclosure requirements set forth in TILA section 127(c). The Bureau believes that the cost disclosures in final § 1026.60 would be helpful to consumers in deciding whether to open such a covered separate credit feature accessible by a hybrid prepaid-credit card.

60(b) Required Disclosures

TILA section 127(c), implemented by existing § 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.[691] Under existing § 1026.60, card issuers generally are required to provide the following disclosures, among other cost disclosures, on or with the applications or solicitations for credit cards: (1) The APRs 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; (6) any late payment fees, over the limit fees, or returned payment fees; (7) whether a grace period on purchases applies; (8) the name of the balance computation method used to determine the balance for purchases; (9) any fees for required insurance, debt cancellation, or debt suspension coverage; (10) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the card, disclosures about the available credit that will remain after those fees are imposed; and (11) a reference to the Bureau's Web site where consumers may obtain information about shopping for and using credit cards.

Under existing § 1026.60(b), charge card issuers generally are required to provide the above disclosure on or with the applications or solicitations for charge cards, except that a charge card issuer is not required to disclose: (1) The APRs applicable to the account for purchases, cash advances, and balance transfers; (2) any minimum or fixed finance charge that could be imposed during a billing cycle; (3) whether a grace period on purchases applies; (4) the name of the balance computation method used to determine the balance for purchases; (5) any fees for required insurance, debt cancellation, or debt suspension coverage; and (6) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the card, disclosures about the available credit that will remain after those fees are imposed.

[691] 15 U.S.C. 1637(c).

The Bureau did not propose any changes to existing § 1026.60(b) or its related commentary. One consumer group commenter indicated that with respect to credit card accounts that will be accessed by a prepaid card that is a charge card, the Bureau should require disclosure of the following items in the table required to be provided on or with applications or solicitations: (1) Any minimum or fixed finance charge that could be imposed during a billing cycle; (2) any fees for required insurance, debt cancellation, or debt suspension coverage; and (3) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the card, disclosures about the available credit that will remain after those fees are imposed. This commenter believed that unlike traditional charge cards, prepaid cards that are charge cards have a significant possibility of imposing fixed finance charges; offering credit insurance, debt cancellation, or debt suspension; or having fees in excess of the 15 percent threshold for the credit availability disclosure.

As discussed in more detail below, the Bureau is revising existing § 1026.60(b) to provide that with respect to a covered separate credit feature that is a charge card account accessible by a hybrid prepaid-credit card as defined in new § 1026.61, a charge card issuer must provide the above three disclosures.

In addition, as discussed in more detail below, new comment 60(b)–3 provides guidance on the application of the disclosure requirements in existing § 1026.60(b) to fees or charges imposed on a covered separate credit feature or an asset feature that are both accessible by a hybrid prepaid-credit card. The final rule also adds new comment 60(b)–4 to provide that the disclosures in final § 1026.60(b) do not apply to fees or charges imposed on the asset feature of the prepaid account with respect to covered separate credit features accessible by hybrid prepaid-credit cards when the fees or charges are not ''charges imposed as part of the plan'' under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. New comment 60(b)–4 also provides that the disclosures in final § 1026.60(b) do not apply to fees or charges imposed on the asset feature of a prepaid account with respect to a non-covered separate credit feature. The Bureau believes this additional guidance in new comments 60(b)–3 and –4 is needed given the changes in the final rule to the definition of ''finance charge'' in final § 1026.4, the definition of ''charges imposed as part of the plan''

in final § 1026.6(b)(3), and the addition of new § 1026.61.

Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards That Are Charge Cards

As discussed above, one consumer group commenter indicated that with respect to a credit card account that will be accessed by a prepaid card that is a charge card, the Bureau should require disclosure of the following items in the table required to be provided on or with applications or solicitations: (1) Any minimum or fixed finance charge that could be imposed during a billing cycle; (2) any fees for required insurance, debt cancellation, or debt suspension coverage; and (3) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the card, disclosures about the available credit that will remain after those fees are imposed. This commenter believed that unlike traditional charge cards, prepaid cards that are charge cards have a significant possibility of imposing fixed finance charges; offering credit insurance, debt cancellation, or debt suspension; or having fees in excess of the 15 percent threshold for the credit availability disclosure.

In response to the comment, the Bureau is revising existing § 1026.60(b) to provide that with respect to a covered separate credit feature that is a charge card account accessible by a hybrid prepaid-credit card as defined in new § 1026.61, a charge card issuer also must provide the above three disclosures. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under § 1026.61 and a credit card under § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

TILA section 127(c)(5) states that the Bureau may, by regulation, require the disclosure of information in addition to that otherwise required by 127(c), and modify any disclosure of information required by 127(c), in any application or solicitation to open a charge card account for any person, if the Bureau determines that such action is necessary to carry out the purposes of, or prevent evasions of, any paragraph of this subsection. The Bureau believes that use of its authority under TILA section 105(a) and 127(c)(5) to amend § 1026.60(b) to require such charge card issuers to provide these three disclosures is necessary and proper to effectuate the purposes of TILA to help ensure the informed use of covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards. 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 consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit.[692] In addition, the Bureau believes that requiring these three disclosures for covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards will, consistent with Dodd-Frank Act section 1032(a), ensure that the terms of these charge card 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 charge card account.

The Bureau believes that these disclosures may be more helpful for covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards than they would be for traditional charge card accounts. Traditional charge card accounts typically require charge cardholders to repay the charge card balance in full each month. Thus, the required credit insurance, debt cancellation, or debt suspension disclosures typically would not apply to these accounts because the cardholders are not allowed to revolve charge card balances. In addition, traditional charge card accounts are generally targeted to more creditworthy individuals. Thus, these charge cards typically have a higher credit limit and typically do not charge fees for credit availability that exceed 15 percent of the initial credit line. Traditional charge card issuers also typically do not impose fixed finance charges.

Nonetheless, the Bureau believes that covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards may more likely be targeted to consumers with lower credit scores than credit card users overall and the card issuer may not require that charge card balances be repaid in full each month. Thus, in these cases, charge card issuers may be more likely to charge fixed finance charges; require credit insurance, debt cancellation, or debt suspension products; or charge fees for credit availability that might exceed the 15 percent threshold. Thus, the Bureau believes that it is appropriate to apply these disclosures when a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card is opened.

Fee Imposed on the Asset Feature of the Prepaid Account

Covered separate credit features accessible by hybrid prepaid-credit cards. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. Nonetheless, the final rule characterizes certain fees or charges that are imposed on the asset feature of the prepaid account as finance charges in connection with a covered separate credit feature where both the asset feature and the credit feature are accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analysis of § 1026.4(b)(11)(ii) above, new § 1026.4(b)(11)(ii) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, fees or charges imposed on the asset feature of the prepaid account generally are finance charges only to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analysis of § 1026.6 above, the final rule also clarifies that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, fees or charges imposed on the asset feature that are not finance charges also are not ''charges imposed as part of the plan'' with respect to the covered separate credit feature.

[692] 15 U.S.C. 1601.

Given this guidance in the final rule related to fees or charges imposed on the asset feature of the prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card, new comment 60(b)–3 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, a card issuer is required to disclose under final § 1026.60(b) any fees or charges imposed on the asset feature of the prepaid account that are charges imposed as part of the plan under final § 1026.6(b)(3) to the extent those fees or charges fall within the categories of fees or charges required to be disclosed under final § 1026.60(b). For example, assume that a card issuer imposes a $1.25 per transaction fee on the asset feature of a prepaid account for purchases when a hybrid prepaid-credit card accesses a separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, and the card issuer charges $0.50 per transaction for purchases to access funds in prepaid accounts in the same program without such a credit feature. In this case, the $0.75 excess is a charge imposed as part of the plan under final § 1026.6(b)(3) and must be disclosed under final § 1026.60(b)(4).

To facilitate compliance with the disclosure requirements in § 1026.60, new comment 60(b)–4 provides that a card issuer is not required under final § 1026.60(b) to disclose any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. As discussed in more detail in the section-by-section analysis of § 1026.6 above, under new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1, a fee or charge imposed on the asset feature of the prepaid account is not a ''charge imposed as part of the plan'' to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11)(ii) above, these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii). The Bureau believes that the guidance in new comment 60(b)–3 aids compliance with final § 1026.60 by providing additional clarity to card issuers on how the disclosure requirements in final § 1026.60(b) apply to fees or charges imposed on the asset feature of the prepaid account accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges (and thus, not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D)) with respect to the covered separate credit feature are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the covered separate credit feature.

Non-covered separate credit features. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the disclosure requirements in § 1026.60 in its own right.

With respect to non-covered separate credit features that are subject to § 1026.60, new comment 60(b)–4 provides that the disclosure requirements in final § 1026.60 do not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E) with respect to the non-covered separate credit feature. Under new § 1026.6(b)(3)(iii)(E) and new comment 60(b)(3)(iii)(E)–1, with respect to a non-covered separate credit feature as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are ''charges imposed as part of the plan'' under final § 1026.6(b)(3) with respect to the non-covered separate credit feature. New comment 6(b)(3)(iii)(E)–1 also cross-references comment 4(b)(11)–1.ii.B which provides that none of the fees or charges imposed on the asset feature of the prepaid account are finance charges under final § 1026.4 with respect to the non-covered separate credit feature. Thus, a card issuer of a non-covered separate credit feature would not be required to disclose any fees or charges imposed on the asset feature of the prepaid account under final § 1026.60(b) with respect to the non-covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the non-covered separate credit feature.

60(b)(4) Transaction Charges

Existing § 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.[693] The proposal would have added proposed comment 60(b)(4)–3 to provide guidance on when fees would be considered transaction fees for purchases under existing § 1026.60(b)(4) for prepaid cards that are credit cards. Specifically, proposed comment 60(b)(4)–3 would have provided 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 existing § 1026.60(b)(4). Proposed comment 60(b)(4)–3 also would have provided that such fees must be disclosed as transaction charges under existing § 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.

The Bureau did not receive specific comments on this aspect of the proposal. The Bureau is adopting proposed comment 60(b)(4)–3 with revisions to be consistent with §§ 1026.8 and 1026.61. New comment 60(b)(4)–3.i provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by

[693] 15 U.S.C. 1637(c)(1)(A)(ii)(III).

new § 1026.61, 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) to make a purchase where this fee is imposed as part of the plan as described in final § 1026.6(b)(3), that fee is a transaction charge described in final § 1026.60(b)(4). This is true whether the fee is a per transaction fee to make a purchase or a flat fee for each day (or other period) the consumer has an outstanding balance of purchase transactions. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, new comment 60(b)(4)–3.ii provides guidance on whether a fee must be disclosed as a fee for a purchase transaction under final § 1026.60(b)(4) or a cash advance transaction under final § 1026.60(b)(8). New comment 60(b)(4)–3.ii provides that a fee for a transaction will be treated as a fee to make a purchase under final § 1026.60(b)(4) in cases where a consumer uses a hybrid prepaid-credit card as defined in new § 1026.61 to make a purchase to obtain goods or services from a merchant, and credit is drawn directly from a covered separate credit feature accessed by the hybrid prepaid-credit card without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. A per transaction fee imposed for the $15 credit transaction must be disclosed under final § 1026.60(b)(4).

As discussed in the section-by-section analysis of § 1026.8(a) above, this guidance in new comment 60(b)(4)–3.ii is consistent with guidance for disclosing those credit transactions as ''sale credit'' on Regulation Z periodic statements under final §§ 1026.7(b)(2) and 1026.8(a) with respect to covered separate credit features accessible by hybrid prepaid-credit cards.

In contrast, new comment 60(b)(4)–3.iii provides that a fee for a transaction will be treated as a cash advance fee under final § 1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in new § 1026.61 to make a purchase to obtain goods or services from a merchant, and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the $15 will be transferred from the covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account. In this case, a per transaction fee for the $15 credit transaction must be disclosed under final § 1026.60(b)(8).

As discussed in the section-by-section analysis of § 1026.8(a) above, this guidance in new comment 60(b)(4)–3.iii is consistent with guidance for disclosing those credit transactions as ''nonsale credit'' on Regulation Z periodic statements under final §§ 1026.7(b)(2) and 1026.8(b) with respect to covered separate credit features accessible by hybrid prepaid-credit cards.

60(b)(8) Cash Advance Fee

Existing § 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.[694]

The proposal would have added proposed comment 60(b)(8)–4 to provide guidance on when fees would be considered cash advance fees that must be disclosed under existing § 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 have provided 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 existing § 1026.60(b)(4), the card issuer could have disclosed 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 have provided the following three examples of how cash advance fees must be disclosed.

Under proposed comment 60(b)(8)–4.i, the first example would have provided 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 could have disclosed 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 have provided 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 could have disclosed 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 could have disclosed the $15 fee on two separate rows, with 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.

Under proposed comment 60(b)(8)–4.iii, the third example would have provided 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 fee for in-network ATM cash withdrawals. The card issuer must

[694] 15 U.S.C. 1637(c)(1)(B)(i).

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 could have disclosed 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 did not receive specific comments on this aspect of the proposal. The Bureau is adopting proposed comment 60(b)(8)–4 as proposed with technical revisions to clarify the intent of the comment and to be consistent with final § 1026.8 and new § 1026.61.[695] New comment 60(b)(8)–4.i provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by new § 1026.61, 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, such as a cash withdrawal at an ATM, where this fee is imposed as part of the plan as described in § 1026.6(b)(3), that fee is a cash advance fee. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

For the reasons discussed in the section-by-section analyses of §§ 1026.8 and 1026.60(a)(4), new comment 60(b)(8)–4.i also provides that a fee for a transaction will be treated as a cash advance fee under final § 1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in new § 1026.61 to make a purchase to obtain goods or services from a merchant, and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. *See also* new comment 60(b)(4)–3.iii. As discussed in the section-by-section analysis of § 1026.8(a) above, this guidance in new comment 60(b)(8)–4.i is consistent with guidance for disclosing those credit transactions as ''nonsale credit'' on Regulation Z periodic statements under final §§ 1026.7(b)(2) and 1026.8(b) with respect to covered separate credit features accessible by hybrid prepaid-credit cards.

New comment 60(b)(8)–4.ii also provides that if the cash advance fee is the same dollar amount as the transaction charge for purchases described in final § 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. Consistent with proposed comment 60(a)(8)–4, new comment 60(a)(8)–4.ii provides examples of how fees for purchase transactions described in final § 1026.60(b)(4) and fees for cash advances described in final § 1026.60(b)(8) that are charged on the covered separate credit feature must be disclosed.

Section 1026.61 Hybrid Prepaid-Credit Cards

The Bureau is adding new § 1026.61 which defines when a prepaid card is a credit card under Regulation Z (using the term ''hybrid prepaid-credit card''). As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above and in more detail below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. Section 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a ''covered separate credit feature.'' Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

New § 1026.61(c) (moved from § 1026.12(h) in the proposal) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as ''non-covered separate credit features,'' as discussed in the section-by-section analysis of § 1026.61(a)(2) below. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see

[695] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. Proposed comment 60(b)(8)–5 would have provided guidance on when fees will be considered cash advance fees under § 1026.60(b)(8) with respect to credit card accounts accessed by such accounts numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt proposed comment 60(b)(8)–5 related to these account numbers.

the section-by-section analyses of § 1026.61(a)(2) and (4) below.

New comment 61(a)–1 explains that in addition to the rules set forth in new § 1026.61, hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards are also subject to other rules in Regulation Z, and some of those rules and related commentary contain specific guidance related to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards. For example, as discussed in the section-by-section analyses of §§ 1026.2(a)(15)(i) and 1026.61(a), a hybrid prepaid-credit card is a credit card for purposes of this regulation with respect to a covered separate credit feature. A covered separate credit feature accessible by a hybrid prepaid-credit card also will be a credit card account under an open-end (not home-secured) consumer credit plan, as defined in final § 1026.2(a)(15)(ii), if the covered separate credit feature is an open-end (not home-secured) credit plan. Thus, the provisions of Regulation Z that apply to credit cards and credit card accounts under an open-end (not home-secured) consumer credit plan generally will apply to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards as applicable (*see generally* subparts B and G). Some of those rules and related commentary contain specific guidance with respect to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards. *See* the section-by-section analyses of subparts A, B and G in this final rule.

61(a) Hybrid Prepaid-Credit Card

TILA section 103(*l*) 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.[696] Under Regulation Z, the term ''credit card'' is defined in existing § 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 Bureau's Proposal

The proposal would have provided 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 proposed § 1026.2(a)(15)(vi) consistent with proposed Regulation E; and (2) account numbers that are not prepaid cards 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 does 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 proposed § 1026.2(a)(15)(vii).

Prepaid cards. The proposal would have covered a broad range of credit plans as credit card accounts under Regulation Z when they were accessed by a prepaid card. First, under the proposal, credit plans, including overdraft services and overdraft lines of credit, directly accessed by prepaid cards generally would have been credit card accounts under Regulation Z. Under the proposal, this would have applied where credit is ''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. In particular, proposed comment 2(a)(15)–2.i.F would have provided that the term ''credit card'' generally includes a prepaid card that is a single device that may be used from time to time to access a credit plan.

The proposal intended broadly to capture a prepaid card as a credit card when it directly accessed a credit plan, regardless of whether that credit plan was structured as a separate credit plan or as negative balance to the prepaid account. The Bureau recognized that under the proposal, credit would have included: (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 would have been credit accessed by a prepaid card that is a credit card under the proposal regardless of whether the person established a separate credit account to extend the credit or whether the credit was simply reflected as a negative balance on the prepaid account.

The proposal would not have applied the credit card rules in situations in which a prepaid card only assessed credit that is not subject to any finance charge, as defined in § 1026.4, or fee described in § 1026.4(c), and was not payable by written agreement in more than four installments. Specifically, the proposal provided that the prepaid card in such situations would not have been a credit card. As discussed in the section-by-section analysis of § 1026.4 above, the proposal also included revisions to the definition of ''finance charge'' in § 1026.4(a) and (b)(2) and their related commentary to delineate when a fee imposed in relation to credit accessed by a prepaid card that is a credit card would have been a finance charge under § 1026.4. In general, the proposal would have treated any transaction charges imposed on a cardholder by a card issuer on a prepaid account in connection with credit accessed by a prepaid card as a finance charge, regardless of how the amount of the fees compared to fees the issuer charged on non-credit transactions or accounts that did not involve credit access. The Bureau recognized that, under the proposal, if a prepaid account issuer would have imposed a per transaction fee on a prepaid account for any transactions authorized or settled on the prepaid account, the prepaid account issuer would have needed to waive that per transaction fee imposed on the prepaid account when the transaction accessed credit in order to take advantage of the proposed exception for when a prepaid card would not be a credit card under the proposal.

Account numbers that are not prepaid cards. As discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i) above, proposed § 1026.2(a)(15)(vii) would have included within the definition of credit card ''an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.'' As used in the proposal, this term would have meant an account number that was not a prepaid card that may be used from time to time to access a credit plan that allowed deposits directly into particular prepaid accounts specified by the creditor but did 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. Proposed comment 2(a)(15)–2.i.G would have provided that these account numbers were credit cards under the proposal.

This proposal language would have covered credit plans that are not accessed directly by prepaid cards but instead are structured as ''push'' accounts. Under such a credit plan, a person would provide credit accessed by an account number where such extensions of credit may only be deposited directly into particular prepaid accounts specified by the person and cannot be deposited directly

[696] 15 U.S.C. 1602(*l*).

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 that 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. In the proposal, the Bureau expressed concern that these types of credit plans could act as substitutes for credit plans directly accessed by a prepaid card. The Bureau did not, however, propose to cover general purpose lines of credit where a consumer has the freedom to choose where to deposit directly the credit funds.

Comments Received on Prepaid Cards Accessing Credit From Separate Credit Features

In response to the proposal, several commenters expressed concern about the way the proposal would have applied the credit card rules to credit products that were structured as standalone plans or products, rather than as negative balances on the prepaid account. An issuing credit union requested clarification that the proposal would have applied the credit card rules to situations in which a prepaid card could be used to initiate the load or transfer of credit to a prepaid account, but this load or transfer could not occur in course of processing transactions conducted with the card when there were insufficient funds in the prepaid account to cover the amount of the transaction. This commenter noted that consumers can consciously load value to their prepaid account using their debit card or credit card, where this load is not occurring as part of an overdraft feature in connection with the prepaid account. When using the debit card, the consumer may consciously load funds from an overdraft or line of credit product that is linked to a traditional checking account. When using a credit card, the consumer is loading credit from an available credit card balance to fund the prepaid account. This commenter urged the Bureau to clarify that such loads do not make the prepaid card into a credit card under Regulation Z.

On the other hand, as discussed above, several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These commenters urged the Bureau to apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter suggested that the Bureau should apply the credit card rules to all open-end lines of credit where credit is deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

Two industry trade associations said the Bureau should not consider a prepaid card to be a credit card with respect to a separate credit feature when the credit feature is offered by an unrelated third party rather than the prepaid account issuer or an associated company. These commenters indicated that such unrelated third-party creditors are not in a position to know that they have additional obligations under Regulation Z at the point in time that a prepaid account issuer or a consumer chooses to use a credit feature offered by the unrelated third-party creditor as a form of overdraft credit feature in relation to a prepaid account. Several other commenters, including an industry trade association, a program manager, and several issuing banks, requested clarification that a prepaid card would not be a credit card under the proposal where it accesses credit deposited into the prepaid account from a separate credit feature offered by an unrelated third-party creditor. These commenters argued that prepaid account issuer may not know that the deposited funds are credit.

On the other hand, several consumer groups supported the proposed rule's approach in considering a third party that offers an open-end credit feature accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z. They believed the proposed rule would deter evasion by third-party creditors that allow their credit features to be used as an overdraft credit feature accessed by prepaid cards.

Comments Received on Prepaid Cards Accessing Credit Through a Negative Balance on the Asset Feature of a Prepaid Account

The Bureau also received comments on the proposal regarding when a prepaid card is a credit card when it accesses credit extended through a negative balance on the asset feature of the prepaid account. As discussed above, the proposal would have provided that a prepaid card would not have been a credit card under existing § 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.

Many industry commenters argued that the Bureau should not regulate overdraft credit features in connection with prepaid accounts under Regulation Z except where there is an agreement to extend credit, consistent with how overdraft credit is treated currently with respect to checking accounts. These commenters said that the Bureau should instead subject overdraft credit programs where there is not an agreement to the opt-in regime in Regulation E § 1005.17, which currently applies to overdraft services provided for ATM and one-time debit card transactions. Several commenters, including industry trade associations, a credit union service organization, a credit reporting agency, and a program manager, also asserted that overdraft credit does not meet the definition of ''credit'' under TILA because with respect to overdraft credit, there is no right to defer payment and/or no right to incur debt. These comments are discussed in more detail in the *Overview of the Final Rule's Amendments to Regulation Z* section and in the section-by-section analysis of § 1026.2(a)(14) above.

In commenting on the specifics of the Regulation Z proposal, many industry commenters were concerned that because of the breadth of the fees that would be considered finance charges under the proposal, a prepaid account issuer either could not charge general transactional fees on the prepaid account or would have to waive certain fees on any transaction that happened to have involved credit, as defined under the proposal, in order to avoid triggering the credit card rules.

For example, one payment network indicated that a prepaid card should not be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account if the *only* fees charged on the prepaid

account in connection with the extension of credit are the *very same* fees that would apply to the same transaction on the prepaid card without an extension of credit. Similarly, two industry trade associations urged that a prepaid card should be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account only if the prepaid account issuer charges fees directly correlated with the overdraft in question. These commenters argued that a prepaid card should not be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account if the prepaid account issuer only imposes on the prepaid account fees or charges that are wholly unrelated to an overdraft, such as a fee to make a balance inquiry at an ATM. These commenters also indicated that a prepaid card should not be a credit card when the prepaid account issuer only imposes unrelated fees or charges on the prepaid account, even when these unrelated fees or charges are imposed when the prepaid account balance is negative.

Another industry trade association indicated that a monthly fee to hold the prepaid account should not be a ''finance charge'' simply because it may be imposed when the balance on the prepaid account is negative or because negative balances can occur on the prepaid account.

A program manager indicated that the Bureau should clarify that a prepaid card is not a credit card simply because the prepaid account issuer charges reasonable debt collection costs (including attorney's fees) related to collecting the overdraft credit from a consumer.

Many industry commenters were particularly concerned that under the proposal, a prepaid account issuer would need to waive per transaction fees in certain circumstances to avoid triggering the credit card rules. The circumstances raised by industry commenters centered on: (1) Force pay transactions; (2) payment cushions; and (3) transactions that take the account negative when a load of funds from an asset account is pending. These comments are discussed below and in further detail in the section-by-section analysis of § 1026.61(a)(4).

Force pay transactions. ''Force pay'' transactions occur where the prepaid account issuer is required by card network rules to pay a transaction even though there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction at settlement. This can occur, for example, where a transaction is either not authorized in advance, or where there were sufficient or available funds in the asset feature of the prepaid account at the time the transaction is authorized, but there are insufficient or unavailable funds in the asset feature at the time the transaction is settled, and a negative balance results on the asset feature when the transaction is paid. Because the proposal's definition of finance charge was broad, a force pay transaction would have triggered application of the credit card rules unless the prepaid account issuer would have waived transaction fees. Industry commenters were nearly universally concerned about this outcome, arguing that the credit card rules should not apply so long as the same fee amount applies regardless of whether the transaction is paid entirely from funds in the prepaid account or is paid in whole or in part by credit. Industry commenters said requiring prepaid account issuers to waive per transaction fees to avoid triggering the credit card rules on all force pay transactions would be complicated and thus would impose substantial compliance costs. These commenters indicated that similar issues also may arise with other per transaction fees, such as currency conversion fees when assessed on force pay transactions.

One payment network predicted that if the proposal were finalized, rather than create complex waiver rules, a prepaid account issuer might instead impose much stricter authorization rules in order to prevent inadvertent overdrafts. This commenter indicated that this could make it more difficult for prepaid cardholders to use their cards at gas pumps, restaurants, hotels, or other locations where these overdrafts from force pay transactions are most likely to occur.

One program manager also indicated that while issuers of other prepaid products could possibly avoid being subject to the credit rules by changing their fee structure (*e.g.,* charging a monthly fee to hold the prepaid account instead of charging a per transaction fee), such an option is not available in the payroll card context because State wage and hour laws prohibit periodic fees on payroll card accounts.

With respect to force pay transactions, one consumer group commenter supported requiring a prepaid account issuer to waive the per transaction fee imposed on a credit transaction where credit is extended through a negative balance on the asset feature of the prepaid account in order to avoid triggering the credit card rules under the proposal. Nonetheless, this commenter indicated that if the Bureau decides to make any exceptions with respect to force pay transactions, these exceptions should be limited to prepaid account issuers who do everything possible to prevent overdrafts, have overdrafts in only very rare and unpreventable situations, and do not charge penalty fees related to declined transactions, overdrafts, or negative balances.

Another consumer group commenter similarly urged that if the Bureau decides to provide an exception for force pay transactions, the exception should only be allowed if the prepaid account issuer does not charge a fee to account holders who have a negative balance, and the exception should only be provided to those prepaid account issuers that take reasonable steps to minimize unpreventable overdrafts. In this case, the commenter said that the Bureau also should allow prepaid account issuers to recoup no more than 5 percent of funds deposited each month until all debts caused by unpreventable overdrafts are paid.

Payment cushions. One program manager also raised a concern about its de minimis purchase cushion, whereby it will authorize transactions for some consumers that result in a negative account balance so long as the shortfall is less than $10. For prepaid accounts where a per transaction fee is imposed on the prepaid account on all transactions regardless of whether the transaction is paid entirely with funds from the prepaid account or is paid with credit, a prepaid card would have been a credit card under the proposal unless the prepaid account issuer waived its per transaction fees on transactions that trigger the purchase cushion. This commenter said that it may not continue to offer its de minimis purchase cushion if it were required to waive these per transaction fees.

One consumer group commenter supported not triggering the credit card rules where a prepaid card can only access a de minimis amount of credit, using $10 as a safe harbor, if such credit is not promoted or disclosed.

Transactions that take the account negative when a load of funds from an asset account is pending. One digital wallet provider raised concerns that a prepaid card could be subjected to the credit card rules under the proposal where credit could be extended through a negative balance on the asset feature of the prepaid account for transactions that occur after a consumer has requested a load transaction from another asset account to pay for the transaction but the load transaction has not yet settled. In this case, transactions on the prepaid account may take the account balance negative until the load

transaction from the asset account has settled. This can occur, for example, when a consumer authorizes a remittance through a mobile wallet which is linked to a checking account, the consumer requests that funds be taken from the consumer's checking account to pay for the remittance, and the remittance is sent before the incoming transfer of funds from the checking account is complete. In this case, the prepaid account issuer is extending credit through a negative balance on the asset feature of the prepaid account until the incoming transfer of funds from the checking account is complete.

The commenter indicated that in all its multi-currency transactions, it charges a currency conversion fee for the transaction, including on transactions where credit is extended as described above. Nonetheless, this currency conversion fee for a credit transaction as described above is the same amount as the fee charged for transactions that are paid entirely with funds from the prepaid account. This commenter indicated that under the proposal, it would need to waive this currency conversion fee for transactions where credit is extended to prevent the prepaid card from becoming a credit card under the proposal, even though the currency conversion fee it charges for these transactions is the same amount as the current conversion fee it charges for transactions entirely paid from funds from the prepaid account. This commenter said that if a prepaid card would be a credit card in this scenario and it was required to waive these fees in order to avoid triggering the credit card rules, it would likely stop processing transactions that take the prepaid account negative (such as remittances discussed above) before the incoming transfer of funds from the checking account is complete.

Comments Received on Prepaid Cards That Access Credit When No Fees for Credit Are Imposed

One consumer group commenter expressed concern that the proposal to exclude prepaid cards from the definition of credit card if the prepaid card only accesses credit that is not subject to a finance charge, as defined in § 1026.4, or a fee described § 1026.4(c) would lead to evasions. For example, this commenter was concerned that a prepaid issuer could offer a ''deluxe'' prepaid card that comes with $100 in ''free'' overdraft protection, but the prepaid account issuer recovers the costs for the credit through other fees charged on the credit account that are not finance charges or fees described in § 1026.4(c), such as higher fees for ''voluntary'' credit insurance that is not a finance charge or fee described in § 1026.4(c). This commenter urged the Bureau to cover all prepaid cards as credit cards when the prepaid card accesses credit, regardless of whether a finance charge or a fee described under § 1026.4(c) is imposed for the credit. This commenter recognized, however, that exceptions for force pay transactions and payment cushions as discussed above may be necessary.

Comments Received on Account Numbers That Are Not Prepaid Cards

As discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i) above, consumer group commenters indicated that the proposal with respect to push accounts was too limited. Several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit may be deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

One issuing bank and one law firm writing on behalf of a coalition of prepaid issuers did not support subjecting push accounts to credit card rules. One of these industry commenters indicated that attempting to cover push accounts as credit card accounts under the proposal created an overly complex regulatory regime to address the perceived risk of circumvention or evasion of the rules for overdraft plans set forth in the proposal.

One industry trade association commenter indicated that for arrangements where the consumer has the choice of whether to use the line of credit to cover specified overdrafts or to use the line of credit funds for other purposes, this commenter believes it would be inappropriate to treat the line of credit (or its associated account number) as a credit card. This commenter believed that consumer choice makes it clear that the line of credit is a general use line of credit and not a substitute for an overdraft line of credit.

The Final Rule

Based on the comments received as discussed above, the Bureau is making substantial changes from the proposal to narrow the circumstances in which a prepaid card is a credit card (*i.e.,* hybrid prepaid-credit card) under Regulation Z. A summary of these changes are discussed below. A more detailed description of the changes in the final rule based on the above comments is contained in the section-by-section analyses of § 1026.61(a)(1), (2) and (4).

Under the final rule, new § 1026.61(a) sets forth when a prepaid card is a credit card under the regulation. New § 1026.61(a)(1)(i) provides that credit offered in connection with a prepaid account is subject to new § 1026.61 and the regulation as specified in that section. New § 1026.61(a)(1)(ii) provides generally that a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature, as described in new § 1026.61(a)(2)(i), or with respect to a credit feature structured as a negative balance on the asset feature of the prepaid account as described in new § 1026.61(a)(3). New § 1026.61(a)(1)(ii) also provides that a hybrid prepaid-credit card is a credit card for purposes of Regulation Z with respect to those respective credit features. New § 1026.61(a)(1)(iii) specifies that a prepaid card is not a hybrid prepaid-credit card—and thus not a credit card for purposes of Regulation Z—if the only credit offered in connection with the prepaid account is incidental credit meeting the conditions set forth in new § 1026.61(a)(4).

Separate credit features. As discussed in more detail below in the section-by-section analysis of § 1026.61(a)(2), under new § 1026.61(a)(2)(i), the term ''covered separate credit feature'' means a separate credit feature that is accessible by a hybrid prepaid-credit card. Under new § 1026.61(a)(2)(i), a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature (and thus the separate credit feature is a covered separate credit feature) if the card meets the following two conditions: (1) The card can be used

from time to time to access credit from the credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. The hybrid prepaid-credit card can access both the covered credit feature and the asset feature of the prepaid account, and is a credit card under Regulation Z with respect to the covered separate credit feature.

New § 1026.61(a)(2)(i) also provides that a separate credit feature that meets the two conditions set forth above is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

New § 1026.61(a)(2)(i) would capture overdraft credit features that are separate credit features offered by prepaid account issuers, their affiliates, or their business partners in connection with a prepaid account. For example, a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner in cases where transactions can be initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature in the prepaid account at the time the transaction is initiated, and credit can be drawn, transferred, or authorized to be drawn or transferred, from the credit feature at the time the transaction is authorized to complete the transaction. In addition, a prepaid card is a ''hybrid prepaid-credit card'' with respect to such a credit feature in cases related to settlement of transactions where credit can be automatically drawn, transferred, or authorized to be drawn or transferred, from the credit feature to settle transactions made with the card where there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled.

New § 1026.61(a)(2)(i) also captures situations where transactions can be initiated using a prepaid card where the card is a traditional ''dual purpose'' card. In this case, the card can be used both to access the asset feature of a prepaid account and to draw on the covered separate credit feature independent of whether there are sufficient or available funds in the asset feature to complete the transaction. For example, assume that a consumer has $50 in available funds in her prepaid account. The consumer initiates a $25 transaction with the card to purchase goods and services. If the consumer chooses at the time the transaction is initiated to use the card to access the asset feature of the prepaid account, the card will draw on the funds in the asset feature of the prepaid account to complete the transaction. If the consumer chooses at the time the transaction is initiated to use the card to access the covered separate credit feature, the card will draw on credit from the covered separate credit feature to complete the transaction, regardless of the fact that there were sufficient or available funds in the prepaid account to complete the transaction.

As discussed in more detail below in the section-by-section analysis of § 1026.61(a)(2), new § 1026.61(a)(2)(ii) defines the term ''non-covered separate credit feature'' to mean a separate credit feature that does not meet the two conditions set forth in new § 1026.61(a)(2)(i). A prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature, even if the prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature as described in new § 1026.61(a)(2)(i). A non-covered separate credit feature is not subject to the rules in Regulation Z applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account.

First, a separate credit feature is a ''non-covered separate credit feature'' when the separate credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. This is true even if the separate credit feature functions as an overdraft credit feature with respect to the prepaid account. For example, if a consumer links her prepaid account to a credit card issued by a card issuer, where the card issuer is not the prepaid account issuer, its affiliate, or its business partner, and credit is drawn automatically into the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card for which there are insufficient funds in the prepaid account, the prepaid card is not a hybrid prepaid-credit card with respect to the separate credit feature offered by the unrelated third party.

Second, a separate credit feature is a ''non-covered separate credit feature'' if a prepaid card cannot access the separate credit feature during the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct P2P transfers. This is true even if the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. For example, assume that a consumer can only conduct a draw or transfer of credit, or authorization of either, from a separate credit feature to a prepaid account at the prepaid account issuer's Web site, and these draws, transfers, or authorizations cannot occur in the course of authorizing, settling, or otherwise completing a transaction at the Web site to obtain goods or services, obtain cash, or conduct P2P transfers.

For this type of ''non-covered separate credit feature,'' the credit feature would not be functioning as an overdraft credit feature with respect to the prepaid account. In addition, the prepaid card also is not functioning as a traditional ''dual purpose'' card where the card can be used both to access the asset feature of a prepaid account and to draw on a credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers independent of whether there are sufficient or available funds in the asset feature to complete the transaction. Instead, the prepaid card can only be used to draw or transfer credit from a separate credit feature outside the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

As described above, under new § 1026.61(a)(1)(i) and final § 1026.2(a)(15)(i), a prepaid card is a credit card (*i.e.,* a hybrid prepaid-credit card) for purposes of this regulation with respect to a covered separate credit feature. The Bureau is using its interpretive authority under TILA section 105(a) to define such prepaid cards as credit cards under TILA section 103(*l*). The Bureau believes that defining such prepaid cards as credit cards under § 1026.2(a)(15)(i) is consistent with the definition of ''credit card'' in TILA section 103(*l*). TILA section 103(*l*) 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.[697] The Bureau believes that such a prepaid card meets this TILA definition of

[697] 15 U.S.C. 1602(*l*).

''credit card'' because it can be used from time to time to obtain credit from the separate credit feature in the course of completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

For the reasons set forth in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that most overdraft credit features offered in connection with prepaid accounts should be treated as credit card accounts under Regulation Z, except in limited circumstances as discussed below and in the section-by-section analysis of § 1026.61(a)(4). As discussed further below, however, the Bureau is concerned about covering prepaid cards as credit cards when the cards can access separate credit features offered by unrelated third parties that have no affiliation or business arrangement with the prepaid account issuer, even if the separate credit feature functions as an overdraft credit feature in relation to the prepaid account. In this case, the unrelated third party may not be aware when its credit feature is used as an overdraft credit feature with respect to a prepaid account. If unrelated third parties were subject to the provisions applicable to hybrid prepaid-credit cards, these third parties would face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account. The Bureau is concerned that such third parties might take steps to try to mitigate these kinds of risks, which would make prepaid accounts less widely usable by consumers. Thus, as discussed above and in more detail in the section-by-section analysis of § 1026.61(a)(2) below, the final rule does not cover a prepaid card as a credit card under Regulation Z when it accesses separate credit features offered by these unrelated third parties. In order to facilitate compliance with TILA, the Bureau believes it is necessary and proper to exercise its exception authority under TILA section 105(a) to exclude such prepaid cards from the definition of ''credit card'' under TILA section 103(*l*) and final Regulation Z § 1026.2(a)(15)(i). The exception would facilitate compliance by allowing an unrelated third party to comply with the rules in Regulation Z that already apply to the separate credit feature without having to comply with additional Regulation Z provisions that would apply if the prepaid card were covered as a credit card with respect to the credit feature. Under this exception, third parties would not face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account, where the prepaid card may be linked to the separate credit feature without the knowledge of the unrelated third party.

As discussed above and in more detail in the section-by-section analysis of § 1026.61(a)(2) below, the Bureau also is clarifying that a prepaid card is not a credit card when the prepaid card accesses a separate credit feature that is not functioning as an overdraft credit feature, and the card is not a traditional ''dual purpose'' card as discussed above. In this case, the prepaid card only can access the separate credit feature outside the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Pursuant to its interpretive authority under TILA section 105(a), the Bureau is defining ''credit card'' in current TILA section 103(*l*) and final § 1026.2(a)(15)(i) to exclude a prepaid card from being covered as a credit card with respect to a separate credit feature when it only can access credit from the separate credit feature outside the course of completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau does not interpret TILA section 103(*l*) to encompass an account number for a prepaid account to be a ''credit card'' under TILA section 103(*l*) when the prepaid account number can only be used as a destination for the transfer of money from a separate credit account, and cannot be used to obtain credit within the course of a transaction to obtain goods or service, obtain cash, or conduct P2P transfers. The Bureau believes that when credit is accessed outside of the course of a transaction on a prepaid account, it is somewhat less risky for consumers because consumers would be required to make a deliberate decision to access the credit outside the course of a transaction, and thus can separately evaluate the tradeoffs involved. In addition, as discussed further below, this approach is consistent with regard to how lines of credit that can be accessed by debit cards are treated under the credit card rules in Regulation Z. Thus, consistent with this current definition of ''credit card,'' the Bureau is clarifying that a prepaid card is not a credit card with respect to a separate credit feature when it can only access the separate credit feature outside the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau also believes that this clarification is consistent with the proposal's general focus on covering overdraft credit features offered in connection with prepaid accounts as credit card accounts under Regulation Z.

Credit extended through a negative balance on the asset feature of the prepaid account. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(3) below, under new § 1026.61(a)(3), a prepaid card that can access credit extended through a negative balance on the asset balance of the prepaid card is a hybrid prepaid-credit card unless the card can only access incidental credit as described in new § 1026.61(a)(4). This provision is intended to trigger coverage under the credit card rules with respect to such overdraft credit features. Thus, for purposes of coverage, a person offering such an overdraft credit feature is a ''card issuer'' under final § 1026.2(a)(7) that is subject to Regulation Z, including § 1026.61(b).

In terms of triggering coverage under Regulation Z, under new § 1026.61(a)(1)(i) and (3)(i) and final § 1026.2(a)(15)(i), a prepaid card is a credit card (*i.e.,* hybrid prepaid-credit card) for purposes of this regulation when it is a single device that can be used from time to time to access credit extended through a negative balance on the asset feature of the prepaid account, unless the card can only access incidental credit as described in new § 1026.61(a)(4). The Bureau is using its interpretive authority under TILA section 105(a) to define such prepaid cards as credit cards under TILA section 103(*l*). The Bureau believes that classifying such prepaid cards as credit cards under § 1026.2(a)(15)(i) is consistent with the definition of ''credit card'' in TILA section 103(*l*). TILA section 103(*l*) 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.[698] The Bureau believes that such a prepaid card meets this TILA definition of ''credit card'' because it can be used from time to time to access credit that is extended as a negative balance on the prepaid account in the course of completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

However, as discussed further below, new § 1026.61(b) prohibits a card issuer from structuring an overdraft credit feature as a negative balance on the

[698] 15 U.S.C. 1602(*l*).

asset feature of the prepaid account, unless the program is structured to involve only incidental credit as provided in new § 1026.61(a)(4). The Bureau believes that this rule is necessary to promote transparency and compliance with the credit card requirements. Thus, under new § 1026.61(b), a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). This separate credit feature is a ''covered separate credit feature'' under new § 1026.61(a)(2)(i).

As described in the section-by-section analysis of § 1026.61(a)(4) below, new § 1026.61(a)(4) provides that an overdraft credit feature structured as a negative balance on the asset feature of a prepaid account is not accessible by a hybrid prepaid-credit card where: (1) The prepaid card cannot access a covered separate credit feature as defined in new § 1026.61(a)(2)(i); (2) with respect to the prepaid account accessible by the prepaid card, the prepaid account issuer generally has a policy and practice of declining to authorize transactions made with the card when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the amount of the transactions, or the prepaid account issuer only authorizes those transactions in circumstances related to certain payment cushions and delayed load cushions; and (3) with respect to the prepaid account that is accessible by the prepaid card, the prepaid account issuer does not charge credit-related fees for any credit extended on the asset feature of the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law.

Under this exception, a prepaid account issuer may extend credit through a negative balance on the asset feature of the prepaid account in certain situations, such as force pay transactions, without having to waive general transaction fees, as would have been required under the proposal to avoid triggering the credit card rules. As discussed above, force pay transactions occur where the prepaid account issuer is required by card network rules to pay a transaction even though there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction at settlement. This can occur, for example, where a transaction is either not authorized in advance, or where there were sufficient or available funds in the asset feature of the prepaid account at the time the transaction is authorized, but there are insufficient or unavailable funds in the asset feature at the time the transaction is settled, and a negative balance results on the asset feature when the transaction is paid.

The exception in new § 1026.61(a)(4) also would allow a prepaid account issuer to adopt a payment cushion where the issuer could authorize transactions that would take the account balance negative by no more than $10 at the time the transaction is authorized. In addition, the exception would allow a prepaid account issuer to adopt a delayed load cushion. Specifically, in cases where the prepaid account issuer has received an instruction or confirmation for an incoming EFT originated from a separate asset account to load funds to the prepaid account or where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account but in either case the funds from the separate asset account have not yet settled, the final rule allows a prepaid account issuer to authorize transactions that take the prepaid account negative, so long as the transactions will not cause the account balance to become negative at the time of the authorization by more than the incoming or requested load amount, as applicable.

Thus, the Bureau is intending to exempt overdraft credit features that are structured as a negative balance on the asset feature of the prepaid account under Regulation Z where the prepaid account issuer generally is not authorizing transactions that will take the asset feature of the prepaid account negative and the prepaid account issuer generally does not charge credit-related fees on credit extended on the asset feature of the prepaid account. As discussed in more detail below, the Bureau believes that this exception will address a substantial number of the concerns expressed by industry commenters about situations in which the proposal would have required them to waive general transaction fees on incidental credit to avoid triggering the credit card rules. In light of the very limited nature of the incidental credit at issue, the Bureau believes that it is appropriate to exclude this incidental credit from coverage under Regulation Z. Thus, to facilitate compliance with TILA, the Bureau believes it is necessary and proper to exercise its exception authority under TILA section 105(a), to exclude such prepaid cards that qualify for the exception under new § 1026.61(a)(4) from the definition of ''credit card'' under TILA section 103(*l*) and final Regulation Z § 1026.2(a)(15)(i).[699] The exception in new § 1026.61(a)(4) would facilitate compliance by allowing a prepaid account issuer to comply only with Regulation E with respect to the prepaid account and this incidental credit, instead of also complying with Regulation Z with respect to the incidental credit.

Given that a prepaid account issuer can only extend credit through a negative balance on the asset feature of the prepaid account in limited circumstances under the exception in new § 1026.61(a)(4), and credit-related fees generally may not be imposed for the credit extended, the Bureau anticipates that the credit extended through a negative balance on the asset feature of a prepaid account that qualifies for the exception would be limited. The Bureau believes that certain harms to consumers, such as becoming overextended in using this credit, would be limited. Thus, to facilitate compliance, the Bureau believes that this type of credit 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 § 1005.12(a) above, Regulation E's provisions in final §§ 1005.11 and 1005.18(e) regarding error resolution would apply to extensions of this credit. In addition, such credit extensions would be disclosed on Regulation E periodic statements under existing § 1005.9(b) or, if the financial institution follows the periodic statement alternative in final § 1005.18(c)(1), on the electronic and written histories of the consumer's prepaid account transactions.

Also, as discussed in more detail in the section-by-section analysis of Regulation E § 1005.17 above, although this incidental credit generally is governed by Regulation E, the Bureau is exempting this incidental credit from the opt-in rule in final § 1005.17. Existing § 1005.17 sets forth requirements that financial institutions must follow in order to provide ''overdraft services'' to consumers related to consumers' accounts. Under existing § 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

[699] 15 U.S.C. 1602(*l*).

consumer's account for paying such overdrafts. For the reasons discussed in more detail in the section-by-section analysis of Regulation E § 1005.17 above, the Bureau is adding new § 1005.17(a)(4) to provide that credit accessed from an overdraft credit feature that is exempt from Regulation Z under § 1026.61(a)(4) is not an overdraft service under final § 1005.17(a) and thus would not be subject to the opt-in requirements in final § 1005.17. This is true even though the prepaid account issuer may be charging per transaction fees that are permitted under new § 1026.61(a)(4)(ii)(B) with respect to credit accessed from the overdraft credit feature. The Bureau does not believe that the opt-in requirements in final § 1005.17 are appropriate for these types of overdraft credit features given that these overdraft credit features may not charge higher per transaction fees for credit extended through a negative balance on the asset feature of the prepaid account than the per transaction fees charged when the transaction only accesses funds in the asset feature of the prepaid account.

Account numbers that are not prepaid cards. As discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i) above, upon review of the comments and its own analysis, the Bureau has decided not to adopt the proposal to provide that an account number for a credit account would be a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In proposing these provisions, the Bureau was concerned that a prepaid account issuer and a creditor could design arrangements to circumvent the proposed rules in Regulation Z applicable to prepaid cards that are credit cards. In this case, a third-party creditor could have an arrangement with the prepaid account issuer such that credit from the credit account is pushed from the credit account to the prepaid account during the course of a particular prepaid account transaction to prevent the transaction from taking the prepaid account balance negative. These provisions related to account numbers of the credit account were designed to prevent this type of evasion of the rules applicable to prepaid cards that are credit cards.

The Bureau is addressing this type of evasion by generally covering a prepaid card as a credit card (*i.e.,* ''hybrid prepaid-credit card'') when the card can access a separate credit feature that is functioning as an overdraft credit feature and is offered by a prepaid account issuer, its affiliate, or its business partner.[700] Specifically, new § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a ''covered separate credit feature.'' Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature. In this case, as discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, the final rule provides that a prepaid card is a hybrid prepaid-credit card with respect to the covered separate credit feature regardless of whether (1) the credit is pushed from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) the credit is pulled from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

In addition, the final rule also provides that a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether the covered separate credit feature can only be used as an overdraft credit feature accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways than through the hybrid prepaid-credit card. For the reasons set forth in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that consumers will benefit from the application of the credit card rules generally to a credit account that functions as an overdraft credit feature in connection with a prepaid account when that overdraft feature is offered by a prepaid account issuer, its affiliate, or its business partner, regardless of whether the credit account can only be used as an overdraft credit feature. In addition, the Bureau is concerned about potential evasion if the provisions set forth in the final rule applicable to overdraft credit features described above could be avoided simply by providing other uses for the credit account.

The Bureau believes that the provisions in the final rule described above with respect to a covered separate credit feature adequately capture situations where a separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner functions as an overdraft credit feature in relation to a prepaid account. Thus, the Bureau believes that it is no longer necessary to treat an account number of the credit account as a credit card to capture situations when the credit account may function as an overdraft credit feature in relation to the prepaid account.

As discussed above and in more detail in the section-by-section analysis of § 1026.61(a)(2) below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. As discussed above and in more detail in the section-by-section analyses of § 1026.61(a)(2) and (4) below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when

[700] One consumer group commenter urged the Bureau to include an anti-evasion provision in the final rule. This commenter believed that the Bureau should be able to rely on an anti-evasion rule to prohibit conduct that clearly is against the spirt of the rules, even if the final rule does not specifically prohibit that activity. The Bureau is not adopting such an anti-evasion rule at this time. The Bureau in various ways has crafted the final rule to address potential areas of evasion that could arise with respect to the application of the rules in Regulation Z to overdraft credit features offered by prepaid account issuers, their affiliates, or their business partners in connection with prepaid accounts. *See, e.g.,* the section-by-section analyses of §§ 1026.2(a)(7) and (a)(15)(i) and 1026.4(b)(11)(ii) above, and 1026.61(a)(4) and (a)(5)(iii) below.

the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

61(a)(1) In General

New § 1026.61(a)(1)(i) provides that credit offered in connection with a prepaid account is subject to new § 1026.61, as specified in that section. New § 1026.61(a)(1)(ii) provides generally that a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature as described in new § 1026.61(a)(2)(i), or with respect to a credit feature structured as a negative balance on the asset feature of the prepaid account, as described in new § 1026.61(a)(3). New § 1026.61(a)(1)(ii) also provides that a hybrid prepaid-credit card is a credit card for purposes of Regulation Z with respect to those respective credit features. New § 1026.61(a)(1)(iii) specifies that a prepaid card is not a hybrid prepaid-credit card—and thus not a credit card for purposes of Regulation Z—if the only credit offered in connection with the prepaid account is incidental credit meeting the conditions set forth in new § 1026.61(a)(4).

As described below, the commentary to new § 1026.61(a)(1) contains general guidance on the circumstances in which a prepaid card is a hybrid prepaid-credit card under § 1026.61(a).

Credit Accessible by a Hybrid Prepaid-Credit Card

New comment 61(a)(1)–1 makes clear that a prepaid card is a hybrid prepaid-credit card if the prepaid card can access credit from a covered separate credit feature described in new § 1026.61(a)(2)(i), or if the prepaid card can access credit through a negative balance on the asset feature of a prepaid account described in new § 1026.61(a)(3) (except as provided in new § 1026.61(a)(4)), even if, for example: (1) The person that can extend the credit does not agree in writing to extend the credit; (2) the person retains discretion not to extend the credit; or (3) the person does not extend the credit once the consumer has exceeded a certain amount of credit. For the reasons discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau does not believe that whether a prepaid card is a credit card under Regulation Z should turn on whether the person has agreed in writing to extend the credit or retains the discretion not to extend credit in certain circumstances.

Prepaid Card That Is Solely an Account Number

Proposed comment 2(a)(15)–2.i.F would have provided 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. Thus, under the proposal, a prepaid card that is solely an account number would have been a credit card under § 1026.2(a)(15)(i) if it met this standard.

For reasons discussed in more detail in the section-by-section analyses of § 1026.61(a)(2) and (4) below, the Bureau is revising from the proposal the circumstances in which a prepaid card is a credit card (*i.e.,* hybrid prepaid-credit card). Nonetheless, consistent with the proposal, new comment 61(a)(1)–2 provides that a prepaid card that is solely an account number is a hybrid prepaid-credit card (and thus is a credit card under Regulation Z) if it meets the conditions for being a hybrid prepaid-credit card set forth in new § 1026.61(a).

Usable From Time to Time

Current comment 2(a)(15)–1 provides that a credit card under Regulation Z must be usable from time to time. Because 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 have revised this comment to provide 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 is obtained using the prepaid account number and not the check. The proposal also would have revised this comment to cross-reference proposed comment 2(a)(15)–2.i.F for a discussion of when a prepaid account number is a credit card.

The Bureau did not receive specific comment on this aspect of the proposal. The final rule moves the proposed guidance in proposed comment 2(a)(15)–1 related to prepaid accounts to new comment 61(a)(1)–3 and revises it to be consistent with new § 1026.61. Consistent with current comment 2(a)(15)–1, new comment 61(a)(1)–3 provides that in order for a prepaid card to be a hybrid prepaid-credit card under new § 1026.61(a), the prepaid card must be capable of being used from time to time to access credit as described in new § 1026.61(a). Because 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 hybrid prepaid-credit cards. Consistent with the proposal, new comment 61(a)(1)–3 also provides that with respect to a preauthorized check that is issued on a prepaid account for which credit is extended through a negative balance on the asset feature of the prepaid account, or credit is drawn, transferred or authorized to be drawn or transferred from a separate credit feature, the credit is obtained using the prepaid account number and not the check at the time of preauthorization using the prepaid account number. The comment states that a prepaid account number is a hybrid prepaid-credit card if the account number meets the conditions set forth in new § 1026.61(a), as discussed above.

Prepaid Account That Is a Digital Wallet

One digital wallet provider indicated that the Bureau should clarify that the proposal's restrictions do not apply to a digital wallet's stored payment credentials. This commenter indicated that stored credentials do not present the same risks of consumer harm as overdraft protection for prepaid cards. New comment 61(a)(1)–4 provides guidance on the circumstances in which prepaid account number for a digital wallet that is a prepaid account is a hybrid prepaid-credit card under new § 1026.61(a).

Specifically, new comment 61(a)(1)–4 states that a digital wallet that is capable of being loaded with funds is a prepaid account under final Regulation E § 1005.2(b)(3). *See* final Regulation E § 1005.2(b)(3) and comment 2(b)(3)(i)–6. The comment explains that a prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card if it meets the conditions set forth in new § 1026.61(a).

New comments 61(a)(1)–4.i.A and B provide illustrations of this rule. First, the comments explain that a prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card under new § 1026.61(a)(2)(i) where it can be used from time to time to: (1) Access a covered separate credit feature

offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct P2P transfers as described in new § 1026.61(a)(2)(i); or (2) access the stored credentials for a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct P2P transfers as described in new § 1026.61(a)(2)(i).

Second, new comments 61(a)(1)–4.i.C and D state that a prepaid account number that can access such a digital wallet is not a hybrid prepaid-credit card with respect to: (1) Credentials stored in the prepaid account that access a non-covered separate credit feature as described in new § 1026.61(a)(2)(ii) that is not offered by the prepaid account issuer, its affiliate, or its business partner, even if the prepaid account number can access those credentials in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) credentials stored in the prepaid account that access a non-covered separate credit feature as described in new § 1026.61(a)(2)(ii), where the prepaid account number cannot access those credential in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct P2P transfers, even if such credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

Third, comment 61(a)(1)–4.ii states that a digital wallet is not a prepaid account under final Regulation E § 1005.2(b)(3) if the digital wallet can never be loaded with funds, such as a digital wallet that only stores payment credentials for other accounts. See final Regulation E § 1005.2(b)(3) and comment 2(b)(3)(i)–6. The comment explains that an account number that can access such a digital wallet would not be a hybrid prepaid-credit card under new § 1026.61(a), even if the wallet stores a credential for a separate credit feature that is offered by the digital wallet provider, its affiliate, or its business partner and can be used in the course of a transaction involving the digital wallet.

Prepaid Account That Can Be Used for Bill Payment Services

To help ensure compliance with the final rule, the Bureau also is including guidance in the final rule on when a prepaid card that can be used for an online bill payment service offered by the prepaid account issuer is a hybrid prepaid-credit card under § 1026.61(a). New comment 61(a)(1)–5 provides that where a prepaid account can be used for online bill payment services offered by the prepaid account issuer, the prepaid card (including a prepaid account number) that can access that prepaid account is a hybrid prepaid-credit card if it meets the requirements set forth in § 1026.61(a). For example, if a prepaid account number can be used from time to time to initiate a transaction using the online bill payment service offered by the prepaid account issuer to pay a bill, and credit can be drawn, transferred, or authorized to be drawn or transferred to the prepaid account from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing that transaction as described in § 1026.61(a)(2)(i), the prepaid account number would be a hybrid prepaid-credit card under § 1026.61(a). In this case, the prepaid account number can be used to draw or transfer credit, or authorize the draw or transfer of credit, from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of completing a transaction to pay for goods or services through the online bill payment service.

Real-Time Notification or Opt-In for Overdrafts

In the proposal, the Bureau discussed the possibility of requiring additional real-time notifications of transactions triggering an overdraft or requiring real-time opt-in by consumers to approve each overdraft in addition to applying the credit card rules in Regulation Z to overdraft credit features in connection with prepaid accounts. The Bureau understood 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 was unsure at the time whether such a procedure could be implemented given that notifications and/or opt-in might require multiple communications among financial institutions, card networks, and merchants. Accordingly, the Bureau did not propose any requirements related to real-time notification or opt-in, but it solicited comment on possible options and suggestions for what it might require in this regard for prepaid accounts.

Several commenters, including industry trade associations and an issuing bank, indicated that real-time notification and opt-in is not feasible with current technology. Two of these commenters were concerned that such notices are not feasible given existing technology and that such notices could thus never be reliable and therefore would be more likely to lead to consumer confusion. These commenters stated that current processing systems will not necessarily have real-time balances and cannot be depended upon for providing real-time notices with any reliability. Further, these commenters stated that current terminals are not capable of displaying the required messaging. Thus, these commenters stated that it is not clear that the requisite technology is in place to comply with the potential notification and opt-in requirements discussed above, and thus there is a likelihood that such a requirement could lead to consumer confusion. Moreover, even if the card issuer clearly discloses that real-time notifications will not always be provided, the fact that they could be provided for the majority of transactions will lead consumers over time to believe that the notices are more reliable than in fact they are.

One program manager that offers an overdraft feature in connection with some of its prepaid accounts indicated that consumers who use the overdraft feature consent to receive notifications electronically, and the program manager sends electronic messages notifying consumers when they have overdrafted. The program manager indicated that most of these consumers with the overdraft feature also choose to receive alert messages that provide balance information periodically and after every transaction. This program manager indicated that a point-of-sale opt-in may present challenges, but it may be feasible to create a program where the overdraft feature could be turned on for a time-period during which the consumer intends to use the feature.

One consumer group said that the Bureau should mandate clear and deliberate opt-in processes so the consumer knows exactly the moment when they can begin incurring overdraft charges. Another consumer group commenter stated that current technology exists that can notify a person that the account has insufficient funds, via text or email. After receiving this notification, consumers could

transfer funds if they wish to avoid credit. This commenter noted that its research has found that many people overdraft without knowing it and most would prefer to have transactions declined rather than paying a fee for overdrawing their accounts.

Based on these comments, the Bureau is not adopting real-time notification and opt-in requirements at this time. The Bureau will continue to monitor developments with respect to real-time notification and opt-in.

61(a)(2) Prepaid Card Can Access Credit From a Covered Separate Credit Feature

In General

As discussed above, the Bureau received industry comments stating that a prepaid card should not be a credit card with respect to a separate credit feature when the credit feature is offered by an unrelated third party. On the other hand, as discussed above, several consumer groups supported the proposed rule to consider a third party that offers an open-end credit feature accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z.

In addition, the Bureau received an industry comment that the Bureau should clarify that a prepaid card should not be a credit card when the prepaid card could be used to initiate the load or transfer of credit to the prepaid account, but this load or transfer could not occur in order to process transactions conducted with the card when there were insufficient funds in the prepaid account to cover the amount of the transaction. On the other hand, as discussed above, several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit may be deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

As discussed in more detail below, under the final rule, new § 1026.61(a)(2)(i)(A) defines a separate credit feature accessible by a hybrid prepaid-credit card as described in new § 1026.61(a)(2)(i) as a covered separate credit feature. Under new § 1026.61(a)(2)(i)(A), a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature (and the separate credit feature is a covered separate credit feature) when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are both satisfied: (1) The card can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. As discussed in more detail below, new § 1026.61(a)(2)(i)(B) provides that a separate credit feature that meets the two conditions set forth above is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

As discussed in more detail below, consistent with the proposal, under new § 1026.61(a)(2)(i), a prepaid card is a credit card under Regulation Z (*i.e.,* hybrid prepaid-credit card) with respect to a separate credit feature when the credit feature functions as an overdraft credit feature with respect to the prepaid account, and the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. Consistent with the proposal, new § 1026.61(a)(2)(i) also captures situations where transactions can be initiated using a prepaid card where the card is a traditional ''dual purpose'' card. In this case, the card can be used both to access the asset feature of a prepaid account and to draw on the covered separate credit feature independent of whether there are sufficient or available funds in the asset feature to complete the transaction.

Under the final rule, a prepaid card is a hybrid prepaid-credit card when it can access credit from a covered separate credit feature as described in new § 1026.61(a)(2)(i), even if finance charges are not charged in relation to this credit. As discussed above, under the proposal, a prepaid card would not have been 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. One consumer group commenter expressed concern that the exclusion of prepaid cards from the definition of credit card if the prepaid card only accesses credit that is not subject to a finance charge, as defined in § 1026.4, or a fee described § 1026.4(c) would lead to evasions. For example, this commenter was concerned that a prepaid issuer could offer a ''deluxe'' prepaid card that comes with $100 in ''free'' overdraft protection but recover the costs for the credit through other fees charged on the credit account that are not finance charges or fees described in § 1026.4(c), such as higher fees for purportedly ''voluntary'' credit insurance that is not a finance charge or fee described in § 1026.4(c). This commenter urged the Bureau to cover all prepaid cards as a credit card when the prepaid card accesses credit, regardless of whether a finance charge or a fee described under § 1026.4(c) is imposed for the credit. This commenter recognized, however, that exceptions for force pay transactions and payment cushions may be necessary.

To address these concerns, the Bureau provides that a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature when it meets the two conditions set forth in § 1026.61(a)(2)(i), regardless of whether finance charges are imposed in connection with the credit from the covered separate credit feature. The Bureau believes that the final rule is consistent with the intent of the proposal and the definition of ''credit card'' under Regulation Z, which applies to ''charge cards'' and other credit products meeting the regulatory definitions even if they do not involve finance charges.[701] In proposing not to

[701] Specifically, 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). In addition, under Regulation Z, a card issuer (or its agent) offering credit is a ''creditor'' under

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apply the credit card rules in situations in which a 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, the Bureau intended to provide this exception only with respect to credit extended through a negative balance on the asset feature of the prepaid account. In the proposal, the Bureau stated its belief that this type of credit, where no credit-related fees are imposed, is more properly regulated under Regulation E as credit incidental to the prepaid card transaction. See the section-by-section analysis of § 1026.61(a)(4) below for a description of the exception that is contained in the final rule.

With regard to covered separate credit features, however, the same logic does not apply. Not all credit extensions accessing separate credit features via a prepaid card would be subject to Regulation E protections if Regulation Z did not apply. Rather, Regulation E would apply to credit extensions that are deposited in a prepaid account by use of an EFT, but it would not apply to extensions of credit where the transaction does not involve an EFT to or from the prepaid account. The final rule also is consistent with the definition of ''credit card'' under Regulation Z, which does not require that finance charges be charged for the credit in order for a device to meet the definition of ''credit card.''

The Bureau also believes that considering a prepaid card to be a hybrid prepaid-credit card with respect to a covered separate credit feature when it meets the two conditions set forth in § 1026.61(a)(2)(i), regardless of whether finance charges are imposed in connection with the credit from the covered separate credit feature, also would help prevent card issuers from structuring their fees to recover the cost of credit through fees that are not finance charges to avoid triggering the credit card rules. The Bureau believes that this will help promote transparency and consumers understanding of the costs of credit.

Thus, the final rule provides that a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature, as defined in § 1026.61(a)(2)(i), regardless of whether finance charges are imposed for the credit from the covered separate credit feature.

Covered Separate Credit Features

New § 1026.61(a)(2)(i)(A) provides that a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature and the following two conditions are both satisfied: (1) The card can be used to draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. Under new § 1026.61(a)(2)(i)(A), a separate credit feature that is accessible by a hybrid prepaid-credit card is a covered separate credit feature.

New § 1026.61(a)(2)(i)(B) provides that a separate credit feature that meets the conditions set forth above is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In developing these rules, the Bureau was conscious that there were two distinct types of credit extensions that could occur with respect to a covered separate credit feature. The first type of credit extension is where the hybrid prepaid-credit card accesses credit in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second type of credit extension is where a consumer makes a standalone draw or transfer of credit from the covered separate credit feature, outside the course of any transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau believes that if the prepaid card is capable of accessing the separate credit feature in the two conditions set forth in § 1026.61(a)(2)(i), the covered separate credit feature is a credit card account under Regulation Z, even with respect to draws or transfers of credit from the covered separate credit feature that occur outside the course of any transactions conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers. This is consistent with other provisions in Regulation Z that apply the credit card rules to the credit card account generally, even with respect to transactions that are not conducted with the credit card, such as convenience check transactions. *See, e.g.,* §§ 1026.52(a) and (b) and 1026.55 and related commentary, and § 1026.12(d)(1) and comment 12(d)(1)–3.

Under new § 1026.61(a)(2)(i), a hybrid prepaid-credit card that can access a covered separate credit feature, as defined in new § 1026.61(a)(2)(i), is a credit card under Regulation Z with respect to that covered separate credit feature. In this case, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account. New comment 61(a)(2)–1.i provides that for a prepaid card to be a hybrid prepaid-credit card under new § 1026.61(a)(2)(i) with respect to a separate credit feature, the prepaid account must be structured such that the draw or transfer of credit, or authorizations of either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner is capable of occurring in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct a P2P transfer. In this case, the separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under new § 1026.61(a)(2)(i).

New comment 61(a)(2)–1.ii makes clear a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether (1) the credit is pushed from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) the credit is pulled from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. This provision prevents a prepaid account issuer from evading the credit card provisions of Regulation Z by structuring the transactions as a push of credit funds to the prepaid account (as opposed to a pull of credit funds from the separate credit feature) during the course of a particular prepaid

§ 1026.2(a)(17)(iii) for purposes of the provisions in subpart B of the regulation, regardless of whether a finance charge is imposed for the credit.

account transaction to prevent the transaction from taking the prepaid account balance negative.

New comment 61(a)(2)–1.iii makes clear that a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether the covered separate credit feature can only be used as an overdraft credit feature, solely accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways.

New comment 61(a)(2)–2 provides guidance on when a draw, transfer, or authorization of a draw or transfer occurs within the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers, as described in new § 1026.61(a)(2)(i). Specifically, new comment 61(a)(2)–2.i provides that a draw, transfer, or authorization from a separate credit feature is deemed to be in the ''course of authorizing, settling, or otherwise completing'' a transaction if it occurs during the authorization phase of the transaction or in later periods up to the settlement of the transaction. This comment makes clear that a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner in connection with a prepaid account.

New comment 61(a)(2)–2.ii focuses on situations in which the credit is drawn, transferred, or authorized to be drawn or transferred in the course of authorizing a transaction. New comment 61(a)(2)–2.ii makes clear that under new § 1026.61(a)(2)(i), a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner in cases, for example, where (1) transactions can be initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated, and credit is transferred from the credit feature to the asset feature at the time the transaction is authorized to complete the transaction; and (2) transactions can be initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is directly drawn from the credit feature to complete the transaction, without transferring funds into the prepaid account.

New comment 61(a)(2)–2.iii provides illustrations of transactions in which credit is drawn, transferred, or authorized to be drawn or transferred in the course of settling a transaction. For example, under new § 1026.61(a)(2)(i), a prepaid card is a ''hybrid prepaid-credit card'' with respect to such a separate credit feature in cases where credit can be automatically drawn, transferred, or authorized to be drawn or transferred from the separate credit feature at the time of settlement where there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the original transaction with the card.

New comment 61(a)(2)–3 clarifies that in addition to overdraft credit features, new § 1026.61(a)(2)(i) also covers a prepaid card as a hybrid prepaid-credit card (and thus a credit card under Regulation Z) where the card is a traditional ''dual purpose'' card. In this case, a prepaid card can be used from time to time both to access the asset feature of a prepaid account and to draw on the covered separate credit feature in the course of a transaction independent of whether there are sufficient or available funds in the asset feature to complete the transaction. For example, assume that a consumer has $50 in funds in her prepaid account. The consumer initiates a $25 transaction with the card to purchase goods and services. If the consumer chooses at the time the transaction is initiated to use the card to access the prepaid account, the card will draw on the funds in the asset feature of the prepaid account to complete the transaction. If the consumer chooses at the time the transaction is initiated to use the card to access the covered separate credit feature, the card will draw on credit from the credit feature to complete the transaction, regardless of the fact that there were sufficient or available funds the prepaid account to complete the transaction.

New comment 61(a)(2)–4.i clarifies that new § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards use the terms ''covered separate credit feature'' or ''covered separate credit feature accessible by a hybrid prepaid-credit card'' to refer to a separate credit feature that meets the conditions of new § 1026.61(a)(2)(i). *See, e.g.,* final §§ 1026.4(c)(4), 1026.7(b)(11)(ii)(A), 1026.12(d)(3)(ii), 1026.60(a)(5)(iv), and 1026.60(b). In addition, new comment 61(a)(2)–4.i also states that several provisions in Regulation Z also describe this arrangement as one where a covered separate credit feature and an asset feature on a prepaid account are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61. *See, e.g.,* final §§ 1026.4(b)(11), 1026.6(b)(3)(iii)(D), and 1026.13(i)(2).

New comment 61(a)(2)–4.ii provides guidance on new § 1026.61(a)(2)(i)(B), which provides that a separate credit feature that meets the two conditions set forth in new § 1026.61(a)(2)(i)(A) is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers. New comment 61(a)(2)–4.ii clarifies that if a prepaid card is capable of drawing or transferring credit, or authorizing either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct a P2P transfer, the credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card, even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. For example, with respect to a covered separate credit feature, a consumer may use the prepaid card at the prepaid account issuer's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. This credit transaction is considered a credit transaction on a covered separate credit feature accessible by a hybrid prepaid-credit card, even though the load or transfer of funds occurred outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. As discussed above, the Bureau believes that if the prepaid card is capable of accessing the separate credit feature in the two conditions set forth in § 1026.61(a)(2)(i), the covered separate credit feature is a credit card account under Regulation Z, even with respect to draws or transfers of credit from the covered separate credit feature that occur outside the course of any transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

Non-Covered Separate Credit Features

As discussed above, in order for a separate credit feature to be a ''covered

separate credit feature'' accessible by a hybrid prepaid-credit card, the separate credit feature must meet the following two conditions set forth in new § 1026.61(a)(2)(i): (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

New § 1026.61(a)(2)(ii) defines the term ''non-covered separate credit feature'' to mean a separate credit feature that does not meet these two conditions. Under § 1026.61(a)(2)(ii), a prepaid card that accesses credit from a non-covered separate credit feature is not a hybrid prepaid-credit card with respect to this non-covered separate credit feature, even if the prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature as described above. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account.

New comment 61(a)(2)–5.i clarifies that a separate credit feature is a ''non-covered separate credit feature'' when the separate credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. This is true even if the separate credit feature functions as an overdraft credit feature with respect to the prepaid account. For example, assume a consumer links her prepaid account to a credit card issued by a card issuer that is not the prepaid account issuer, its affiliate, or its business partner so that credit is drawn automatically into the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card for which there are insufficient funds in the asset feature. In this case, the separate credit feature is a non-covered separate credit feature under § 1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card with respect to the separate credit feature offered by the unrelated third-party card issuer.

New comment 61(a)(2)–5.ii clarifies that a separate credit feature is a ''non-covered separate credit feature'' if a prepaid card cannot access the separate credit feature during the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct P2P transfers. This is true even if the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. For example, assume that a consumer can only conduct a draw or transfer of credit, or authorization of either, from a separate credit feature to a prepaid account at the prepaid account issuer's Web site, and these draws, transfers, or authorizations of either, cannot occur in the course of authorizing, settling, or otherwise completing transactions at the Web site to obtain goods or services, obtain cash, or conduct P2P transfers. In this case, the separate credit feature is a non-covered separate credit feature under § 1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card under § 1026.61(a)(2) with respect to this non-covered separate credit feature.

New comment 61(a)(2)–5.iii explains that a person offering a non-covered separate credit feature does not become a card issuer under final § 1026.2(a)(7), and thus does not become a creditor under final § 1026.2(a)(17)(iii) or (iv), because the prepaid card can be used to access credit from the non-covered separate credit feature. The person offering the non-covered separate credit feature, however, may already have obligations under Regulation Z with respect to that separate credit feature. For example, if the non-covered separate credit feature is an open-end credit card account offered by an unrelated third-party creditor that is not an affiliate or business partner of the prepaid account issuer, the person already will be a card issuer under final § 1026.2(a)(7) and thus a creditor under final § 1026.2(a)(17)(iii). Nonetheless, in that case, the person does not need to comply with the provisions in Regulation Z applicable to hybrid prepaid-credit cards even though the prepaid card can access credit from the non-covered separate credit feature. The obligations under Regulation Z that apply to a non-covered separate credit feature are not affected by the fact that the prepaid card can access credit from the non-covered separate credit feature.

Each of the two types of non-covered separate credit features is discussed in more detail below.

Non-covered separate credit feature where a prepaid card can access a separate credit feature that is not offered by the prepaid account issuer, its affiliate, or its business partner. As discussed above, the Bureau received comments from industry stating that a prepaid card should not be a credit card with respect to a separate credit feature when the credit feature is offered by an unrelated third-party. These commenters were concerned that an unrelated third party may not be aware when its credit feature is used as an overdraft credit feature with respect to a prepaid account. If unrelated third parties that offer separate credit features were subject to the provisions applicable to hybrid prepaid-credit cards, these third parties would face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account. This would have been true even if the third parties were already subject to the credit card rules in their own right because the proposal contained a number of provisions that would have applied only to prepaid cards that are credit cards and would not have applied to credit card accounts generally.

In contrast, several consumer groups supported the proposed rule to consider a third party that offers an open-end credit feature accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z.

Based on the comments, the Bureau believes it is appropriate not to trigger status as a hybrid prepaid-credit card where a credit feature is not offered by the prepaid account issuer, its affiliate, or its business partner, even if an individual consumer decides to link the two accounts such that a draw or transfer of credit, or authorization of either, occurs during the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct P2P transfers.

With respect to a third party offering a separate credit feature that is neither an affiliate nor a business partner of the prepaid account issuer, the Bureau recognizes that this unrelated third party may not be aware when its credit feature is used as an overdraft credit feature with respect to a prepaid account. If unrelated third parties were subject to the provisions applicable to hybrid prepaid-credit cards, such third parties would face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account. This can occur when the prepaid account issuer uses the ACH network to execute an authorization from a consumer to pull credit for a consumer from a separate credit account offered by an unrelated third party. Financial institutions participating in the ACH network may have difficulty specifically identifying and blocking pulls of credit by a prepaid account (and, unlike with credit/debit

cards, the prepaid account issuer likely would have no way of knowing if the account and routing number a consumer provides for ACH purposes accesses a deposit account or a credit account). Moreover, because an ACH debit pull may be used to access credit from accounts that are not subject to the current credit card rules in their own right, the Bureau is concerned that unrelated third parties offering separate credit features would face even more challenges if the pull (or the ability to initiate pulls) triggered credit card compliance obligations.

The Bureau also is concerned that unrelated third parties that are already subject to the credit card rules in their own right also may be unwilling to assume that compliance risk due to the prepaid account issuer's actions in linking a separate credit feature offered by an unrelated third party to a prepaid account to be used as an overdraft credit feature. As a result, the Bureau is concerned that credit card networks could prevent prepaid account issuers from being merchants in the network for all purposes because credit card issuers would not want to be subject to the enhanced obligations in Regulation Z that would apply if a prepaid card were deemed to be a credit card with respect to a credit card account offered by an unrelated third party. The Bureau believes that this rule will reduce the risk that unrelated third parties offering separate credit features would take the steps described above, which could harm consumers by making prepaid accounts less widely usable by consumers.

Thus, the final rule does not consider a prepaid card to be a credit card under the regulation in relation to a separate credit feature where an unrelated third party that is not an affiliate or business partner of the prepaid account issuer offers the credit feature.

In contrast, the Bureau does believe that it is appropriate to consider a prepaid card to be a credit card when it can access an overdraft credit feature that is offered by a third party where the third party is the prepaid account issuer's affiliate or its business partner. As discussed further below in the section-by-section analysis of § 1026.61(a)(5), new § 1026.61(a)(5)(i) defines the term ''affiliate'' for purposes of § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards to mean any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

As discussed further below in the section-by-section analysis of § 1026.61(a)(5), new § 1026.61(a)(5)(iii) defines the term ''business partner'' for purposes of § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards generally to mean a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where either (1) the person that can extend credit or its affiliate has an agreement with the prepaid account issuer or its affiliate that the prepaid card can access the separate credit feature in the course of a transaction; or (2) the person that can extend credit or its affiliate has a cross-marketing agreement or other similar arrangement with the prepaid account issuer or its affiliate and where, whether or not by agreement, the prepaid card can access the separate credit feature in the course of a transaction.

The Bureau believes that it is appropriate to consider such an unaffiliated third party that can extend credit to be the prepaid account issuer's business partner in the above circumstances because in those cases, there is a sufficient connection between the parties such that the unaffiliated third party should know that its credit feature is accessible by a prepaid card as a credit feature for the prepaid account. Also, the Bureau believes that these types of links between the prepaid account issuer and the unaffiliated third party are likely to involve revenue sharing or payments between the two companies and the pricing structure of the two accounts may be related. Thus, the Bureau believes that it is appropriate to consider these entities to be business partners in this context.

The Bureau believes that the approach described above of not covering a prepaid card as a credit card with respect to a separate credit feature when it is offered by a third party that is not an affiliate or business partner of the prepaid account issuer addresses the concerns discussed above about unintended consequences for consumers and third parties alike, while appropriately guarding against the risk that third parties offering separate credit features or their affiliates would cooperate with prepaid account issuers or their affiliates to attempt to evade the intended scope of the rules regarding overdraft credit features.

Non-covered separate credit feature where prepaid card can access separate credit feature only outside the course of a transaction. One issuing credit union expressed concerned that the proposal would have triggered the credit card rules in situations in which a prepaid card could be used only to complete standalone loads or transfers of credit from a separate credit feature to the prepaid account, but not to access credit in the course of a transaction conducted with the prepaid card. This commenter noted that consumers can consciously load value to their prepaid account using their debit card or credit card, where the load is not part of an overdraft feature offered in connection with the prepaid account. When using the debit card, the consumer may consciously load funds from an overdraft or line of credit product that is linked to a traditional checking account. When using a credit card, the consumer is loading from an available credit card balance to fund the prepaid account. This commenter urged the Bureau to clarify that such loads do not make the prepaid card into a credit card under Regulation Z.

Several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit may be deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

In the final rule, the Bureau is clarifying the circumstances in which a prepaid card is a credit card from the proposal to address circumstances in which credit can only be loaded or transferred from a separate credit feature to the prepaid account outside the course of completing a transaction conducted with the prepaid card. Under new § 1026.61(a)(2)(ii), even if a separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner, a prepaid card is not a hybrid prepaid-credit card under

new § 1026.61(a)(2) with respect to that separate credit feature if the feature cannot be accessed within the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct P2P transfers. For example, assume that a consumer can only conduct a draw or transfer of credit, or authorization of either, from a separate credit feature to a prepaid account at the prepaid account issuer's Web site, and these draws, transfers, or authorizations of either, cannot occur in the course of authorizing, settling, or otherwise completing transactions at the Web site to obtain goods or services, obtain cash, or conduct P2P transfers. In this case, the separate credit feature is a non-covered separate credit feature under new § 1026.61(a)(2)(ii), and the prepaid card is not a hybrid prepaid-credit card under new § 1026.61(a)(2) with respect to this non-covered separate credit feature.

With respect to this type of non-covered separate credit feature, the separate credit feature cannot function as an overdraft credit feature with respect to the prepaid account. In addition, the prepaid card also cannot function as a traditional ''dual purpose'' card where the card can be used both to access the asset feature of a prepaid account and to draw on the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers independent of whether there are sufficient or available funds in the asset feature to complete the transaction. Instead, the prepaid card can only be used to draw or transfer credit from the separate credit feature on an occasional and intentional basis, outside the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau believes that this situation is somewhat less risky for consumers because consumers would be required to make a deliberate decision to access the credit outside the course of a transaction, and thus can separately evaluate the tradeoffs involved. The Bureau also believes that this clarification is consistent with the proposal's general focus on covering overdraft credit features offered in connection with prepaid accounts as credit card accounts under Regulation Z.

In addition, in adopting this approach, the Bureau is drawing on the same logic and maintaining consistency with the existing credit card rules' treatment of overdraft lines of credit that can be accessed by debit cards. Under the existing rules as set forth in existing comments 2(a)(15)–2.i.B and 2(a)(15)–2.ii.A., debit cards are generally treated as credit cards under existing § 1026.2(a)(15)(i) when they access overdraft lines of credit (where there is an agreement to extend credit). In addition, the term ''credit card'' also includes a deposit account number even when there is no physical debit card device when the account number can be used to access an open-end line of credit to purchase goods or services. Nonetheless, under the current definition of credit card as set forth in existing comment 2(a)(15)(i)–2.ii.C, a deposit account number is not a credit card if the account number can only be used as a destination for the transfer of money from a separate credit account.

Prepaid Card Can Access Multiple Separate Credit Features

The Bureau recognizes that a prepaid card may access multiple separate credit features in a variety of circumstances. New § 1026.61(a)(2)(ii) and new comment 61(a)(2)–6 clarify coverage under new § 1026.61(a)(2) when a prepaid card can access multiple separate credit features. New § 1026.61(a)(2)(ii) and new comment 61(a)(2)–6 provide that even if a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature, it is not a hybrid prepaid-credit card with respect to any non-covered separate credit features. New comment 61(a)(2)–6 provides the following example to illustrate: Assume that a prepaid card can access ''Separate Credit Feature A'' where the card can be used from time to time to access credit from a separate credit feature that is offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In addition, assume that the prepaid card also can access ''Separate Credit Feature B,'' but that credit feature is offered by an unrelated third-party creditor that is not the prepaid account issuer, its affiliate, or its business partner. The prepaid card is a hybrid prepaid-credit card with respect to ''Separate Credit Feature A'' because it is a covered separate credit feature under new § 1026.61(a)(2)(i). The prepaid card, however, is not a hybrid prepaid-credit card with respect to ''Separate Credit Feature B'' because it is a non-covered separate credit feature under new § 1026.61(a)(2)(ii).

61(a)(3) Prepaid Card Can Access Credit Extended Through a Negative Balance On the Asset Feature of the Prepaid Account

Many industry commenters argued that the Bureau should not regulate overdraft credit features under Regulation Z except where there is an agreement to extend credit, consistent with how overdraft credit is treated with respect to checking accounts. These commenters said that the Bureau should instead subject overdraft credit programs where there is not an agreement to the opt-in regime in Regulation E § 1005.17, which currently applies to overdraft services provided for ATM and one-time debit card transactions. For the reasons discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau continues to believe that it is appropriate generally to cover overdraft credit features offered by prepaid account issuers that are structured as a negative balance on the prepaid account as credit card accounts under Regulation Z, except as provided in new § 1026.61(a)(4).

Accordingly, new § 1026.61(a)(3)(i) provides that a prepaid card that can access credit extended through a negative balance on the asset balance of the prepaid card is a hybrid prepaid-credit card unless the card can only access incidental credit as described in new § 1026.61(a)(4). Nonetheless, as discussed in more detail below, new § 1026.61(a)(3) is intended to trigger coverage under the credit card rules with respect to such overdraft credit features. For purposes of coverage, a person offering such an overdraft credit feature is a ''card issuer'' under final § 1026.2(a)(7) that is subject to Regulation Z, including new § 1026.61(b). However, as discussed in more detail in the section-by-section analysis of § 1026.61(b) below, new § 1026.61(b) prohibits card issuers from structuring an overdraft credit feature as a negative balance on the asset feature of the prepaid account, unless the program is structured to involve only incidental credit as provided in new § 1026.61(a)(4). The Bureau believes that this rule is necessary to promote transparency and compliance with the credit card requirements. Thus, under new § 1026.61(b), a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). This

separate credit feature is a ''covered separate credit feature'' under new § 1026.61(a)(2)(i). Thus, new § 1026.61(a)(3)(ii) provides that notwithstanding that § 1026.61(c)(3)(i) triggers coverage under Regulation Z, structuring a hybrid prepaid-credit card to access credit through a negative balance on the asset feature violates new § 1026.61(b). A prepaid account issuer can use a negative asset balance structure to extend credit on an asset feature of a prepaid account only if the prepaid card is not a hybrid prepaid-credit card as described in new § 1026.61(a)(4).

In terms of providing guidance on the situations that trigger coverage under § 1026.61(a)(3)(i), new comment 61(a)(3)(i)–1.i provides a cross-reference to new comment 2(a)(14)–3 for examples of when transactions authorized or paid on the asset feature of a prepaid account meet the definition of credit under final § 1026.2(a)(14). New comment 61(a)(3)(i)–1.ii provides that except as provided in § 1026.61(a)(4), a prepaid card would trigger coverage as a hybrid prepaid-credit card if it is a single device that can be used from time to time to access credit that can be extended through a negative balance on the asset feature of the prepaid account. This comment clarifies, however, that unless the only credit offered meets the requirements of § 1026.61(a)(4), such a product structure would violate the rules under § 1026.61(b).

New comment 61(a)(3)(i)–1.ii also explains that a credit extension through a negative balance on the asset feature of a prepaid account can occur during the authorization phase of the transaction or in later periods up to the settlement of the transaction. New comment 61(a)(3)(i)–1.iii provides that, for example, credit is extended through a negative balance on the asset feature of a prepaid account where a transaction is initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated, and credit is extended on the asset feature of the prepaid account when the transaction is authorized. New comment 61(a)(3)(i)–1.iv also provides, for example, that credit is extended through a negative balance on the asset feature of a prepaid account where a transaction occurs when there are sufficient or available funds in the asset feature of the prepaid account at the time of authorization to cover the amount of the transaction but where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. In this case, credit is extended on the asset feature at settlement to pay those transactions. Also, credit is extended through a negative balance on the asset feature of a prepaid account where a transaction settles even though it was not authorized in advance, and credit is extended through a negative balance on the asset feature at settlement to pay that transaction.

As discussed above, new § 1026.61(a)(3) is intended to trigger coverage under the credit card rules with respect to such overdraft credit features. New comment 61(a)(3)(ii)–1 explains that new § 1026.61(a)(3)(i) determines whether a prepaid card triggers coverage as a hybrid prepaid-credit card under new § 1026.61(a), and thus, whether a prepaid account issuer is a card issuer under final § 1026.2(a)(7) subject to this regulation, including new § 1026.61(b). However, new § 1026.61(b) requires that any credit feature accessible by a hybrid prepaid-credit card must be structured as a separate credit feature using either a credit subaccount of the prepaid account or a separate credit account. In that case, a card issuer would violate new § 1026.61(b) if it structures the credit feature as a negative balance on the asset feature of the prepaid account, unless the only credit offered in connection with the prepaid account satisfies new § 1026.61(a)(4). A prepaid account issuer can use a negative asset balance structure to extend credit on a prepaid account if the prepaid card is not a hybrid prepaid-credit card as described in new § 1026.61(a)(4).

61(a)(4) Exception

As discussed above, many industry commenters raised concerns regarding the breadth of fees that would be considered finance charges under the proposal. Many industry commenters were concerned that even though they were not intending to offer credit in connection with the prepaid account, credit could result in certain circumstances, such as forced pay-transactions as discussed in the section-by-section analysis of § 1026.61(a) above. Because this credit could be extended, many commenters were concerned that fees that generally applied to the prepaid account, but were not specific to the overdraft credit, could be finance charges under the proposal and thus would subject the prepaid account issuer to the credit card rules under Regulation Z. These commenters were concerned that they could not charge certain fees on the prepaid account, or would have to waive certain fees, for the prepaid card not to be a credit card under the proposal.

For example, one payment network indicated that a prepaid card should not be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account if the *only* fees charged on the prepaid account in connection with the extension of credit are the *very same* fees that would apply to the same transaction on the prepaid card without an extension of credit. Similarly, two industry trade associations urged that a prepaid card should be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account only if the prepaid account issuer charges fees directly correlated with the overdraft in question. These commenters argued that a prepaid card should not be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account if the prepaid account issuer only imposes on the prepaid account fees or charges that are wholly unrelated to an overdraft, such as a fee to make a balance inquiry at an ATM. These commenters also indicated that a prepaid card should not be a credit card when the prepaid account issuer only imposes unrelated fees or charges on the prepaid account, even when these unrelated fees or charges are imposed when the prepaid account balance is negative.

Another industry trade association indicated that a monthly fee to hold the prepaid account should not cause a prepaid card to be a credit card simply because the fee may be imposed when the balance on the prepaid account is negative or because negative balances can occur on the prepaid account.

A program manager indicated that the Bureau should clarify that a prepaid card is not a credit card simply because the prepaid account issuer charges reasonable debt collection costs (including attorney's fees) related to collecting the overdraft credit from a consumer.

As discussed above, many industry commenters were particularly concerned that under the proposal, a prepaid account issuer would need to waive per transaction fees in certain circumstances to avoid triggering the credit card rules. The circumstances raised by industry commenters centered on (1) force pay transactions; (2) payment cushions; and (3) transactions that take the account negative when a load of funds from an asset account is pending, as discussed in more detail below and in the section-by-section analysis of § 1026.61(a).

One consumer group commenter urged the Bureau to cover all prepaid cards as credit cards when the prepaid card accesses credit, regardless of whether a finance charge, as defined in § 1026.4, or a fee described under § 1026.4(c) is imposed for the credit. This commenter recognized, however, that exceptions for force pay transactions and payment cushions may be necessary. With respect to payment cushions, this commenter supported not triggering the credit card rules where a prepaid card can only access a de minimis amount of credit, using $10 as a safe harbor, if such credit is not promoted or disclosed. With respect to force pay transactions, this commenter supported requiring a prepaid account issuer to waive the per transaction fee that is imposed on a credit transaction where credit is extended through a negative balance on the asset feature of the prepaid account in order to avoid triggering the credit card rules under the proposal. Nonetheless, this commenter indicated that if the Bureau decides to make any exceptions with respect to force pay transactions, these exceptions should be limited to prepaid account issuers who do everything possible to prevent overdrafts, have overdrafts in only very rare and unpreventable situations, and do not charge penalty fees related to declined transactions, overdrafts, or negative balances.

As discussed above, new § 1026.61(a)(4) creates an exception to the general rule that credit structured as a negative balance feature on an prepaid asset account is subject to the credit card rules, in order to provide flexibility for the kinds of incidental credit that commenters raised concerns about. Specifically as described in new § 1026.61(a)(4), an overdraft credit feature where credit is extended through a negative balance on the asset feature of the prepaid account is not accessible by a hybrid prepaid-credit card where: (1) The prepaid card cannot access a covered separate credit feature as defined in new § 1026.61(a)(2)(i); (2) with respect to the prepaid account accessible by the prepaid card, the prepaid account issuer generally has a policy and practice of declining to authorize transactions made with the card when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the amount of the transactions, or the prepaid account issuer only authorizes those transactions in circumstances related to payment cushions and delayed load cushions discussed below; and (3) with respect to the prepaid account accessible by the prepaid card, the prepaid account issuer does not charge credit-related fees for any credit extended on the asset feature of the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law.[702] Each of the three prongs of the limited exception is discussed in more detail below.

The Bureau believes that the exception in new § 1026.61(a)(4) addresses many of the concerns raised by industry commenters and consumer group commenters. To address evasion risks and other concerns raised by consumer group commenters discussed above, the Bureau has carefully calibrated new § 1026.61(a)(4). Specifically, under the final rule, a prepaid card is not a credit card under the regulation when it accesses credit through a negative balance on the asset feature of the prepaid account only in circumstances where, with respect to a prepaid account accessible by the prepaid card: (1) The prepaid account issuer generally declines to authorize transactions on the prepaid account that will create negative balances on the asset feature of the prepaid account (or allows those authorizations in limited circumstances related to payment cushions and delayed load cushions); and (2) the prepaid account issuer generally does not charge credit-related fees for the credit extended on the asset feature of the prepaid account. Thus, for example, a prepaid card is a credit card under Regulation Z (*i.e.,* a hybrid prepaid-credit card) when credit is extended through a negative balance on the asset feature of a prepaid account where, with respect to the prepaid account accessible by the prepaid card: (1) The prepaid account issuer has a policy and practice of authorizing transactions (outside of the payment cushion and delayed load circumstances described above) where there are insufficient or unavailable funds in the prepaid account to cover the amount of the transaction at authorization; or (2) a prepaid account issuer charges credit-related fees for credit extended through a negative balance on the asset feature of the prepaid account beyond fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law.

Thus, where new § 1026.61(a)(4) has not been satisfied, the final rule prohibits a prepaid account issuer from offering an overdraft credit feature as a negative balance to the asset feature of the prepaid account and requires the prepaid account issuer to offer the overdraft credit feature as a ''covered separate credit feature'' under new § 1026.61(a)(2)(i). Specifically, under new § 1026.61(a)(3), a prepaid card that can access credit extended through a negative balance on the asset feature of the prepaid card is a hybrid prepaid-credit card for purposes of coverage under the credit card rules unless the card can only access credit described in new § 1026.61(a)(4). A person offering such an overdraft credit feature is a ''card issuer'' under final § 1026.2(a)(7) and is subject to Regulation Z, including new § 1026.61(b). However, to facilitate transparency and compliance with Regulation Z, the Bureau is prohibiting card issuers under new § 1026.61(b) from structuring an overdraft credit feature as a negative balance on the asset feature of the prepaid account, except as provided in new § 1026.61(a)(4). Instead, under new § 1026.61(b), a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). This separate credit feature is a ''covered separate credit feature'' under new § 1026.61(a)(2)(i).

The Bureau believes that new § 1026.61(a)(4) will allow prepaid account issuers who do not intend to offer substantive credit programs to provide incidental credit in circumstances that will benefit consumers, without opening the door to widespread evasion of the rule. First, with respect to force pay transactions, payment cushions, and delayed load cushions, under this exception, the final rule provides that credit card rules will not be triggered so long as the prepaid account issuer generally does not charge credit-related fees for the credit extended and has met the other requirements. Second, the final rule provides that a prepaid account issuer is not required under this exception to

[702] An industry trade association and an issuing bank were concerned that all prepaid cards (and associated account numbers) could be credit cards or otherwise subject to Regulation Z solely due to the fact that the cardholder can incur an overdraft that he or she is contractually obligated to repay. These commenters asked the Bureau to clarify that ''credit'' under Regulation Z would not include the amount of an overdraft if the consumer is not contractually obligated to reimburse the card issuer for that overdraft (*i.e.,* the consumer would not be incurring debt or deferring the payment of debt) and to clarify disclosure obligations if the consumer is not contractually obligated to repay the overdraft credit. The Bureau believes that it has addressed these concerns by providing the exception in § 1026.61(a)(4) for how prepaid account issuers may provide incidental credit as a negative balance on the prepaid account without being subject to Regulation Z, even if the consumer is contractually obligated to pay these overdrafts.

waive per transaction fees imposed on the asset feature of the prepaid account if the amount of the per transaction fee imposed for transactions involving credit is not higher than the amount of the fee that is imposed for transactions that only access funds in the asset feature of the prepaid account. Rather, the final rule provides that under this exception, if a fee is not a credit-related fee as enumerated in new § 1026.61(a)(4)(ii)(B), the prepaid account issuer may still debit these fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed. Third, the final rule provides that under this exception, a prepaid account issuer may charge a fee to hold the prepaid account, so long as the amount of the fee or charge to hold the prepaid account imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available. Fourth, the final rule provides that a prepaid account issuer may still qualify for the exception in new § 1026.61(a)(4) even if it charges fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law, so long as the other conditions of the exception have been met.

To the extent that a prepaid account issuer meets the conditions as described in new § 1026.61(a)(4) with respect to a prepaid card, the prepaid card is not a hybrid prepaid-credit card and thus is not a credit card under the regulation. As discussed in more detail below, the final rule provides that in the case where a prepaid card is not a hybrid prepaid-credit card because the only credit it can access meets the conditions set forth in new § 1026.61(a)(4), the prepaid account issuer is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.17(a)(iii) or (iv) because it is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.2(a)(17)(i) as a result of imposing fees on the prepaid account because those fees are not finance charges as described in new comment 4(b)(11)–1.iii. As discussed in the section-by-section analysis of § 1026.61(a), in light of the very limited nature of the incidental credit, the Bureau believes that it is appropriate to exclude this incidental credit from coverage under Regulation Z.

Prepaid card cannot access a covered separate credit feature under § 1026.61(a)(2)(i). To qualify for the exception in new § 1026.61(a)(4), new § 1026.61(a)(4)(i) provides that the prepaid card cannot access credit from a covered separate credit feature, as defined in new § 1026.61(a)(2)(i). The Bureau believes that allowing a prepaid account issuer to take advantage of the exception in new § 1026.61(a)(4) even though the card can access a covered separate credit feature, described in new § 1026.61(a)(2)(i), would allow the prepaid account issuer to circumvent the rules in new § 1026.61(a)(2)(i).

New comment 61(a)(4)–1.i and ii explain that § 1026.61(a)(4)(i) is designed to limit the exception for when a prepaid card is not a credit card to circumstances in which (1) the card can only access credit extended through a negative balance on the asset feature of the prepaid account in accordance with both the conditions set forth in new § 1026.61(a)(4)(ii)(A) and (B); and (2) the card can access credit from a non-covered separate credit feature, as defined in new § 1026.62(a)(2)(ii), but cannot access credit for a covered separate credit feature, as defined in new § 1026.62(a)(2)(i).

New comment 61(a)(4)–1.iii makes clear that a prepaid account issuer does not qualify for the exception in new § 1026.61(a)(4) if the prepaid account issuer structures the arrangement such that when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time a transaction is initiated, the card can draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner during the authorization phase to complete the transaction so that credit is not extended on the asset feature of the prepaid account.

New comment 61(a)(4)–1.iv provides guidance on how the regulation applies in cases where the prepaid card is not a hybrid prepaid-credit card. Specifically, new comment 61(a)(4)–1.iv provides that in the case where a prepaid card is not a hybrid prepaid-credit card because the only credit it can access meets the conditions set forth in new § 1026.61(a)(4), the prepaid account issuer is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.17(a)(iii) or (iv) because it is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.2(a)(17)(i) as a result of imposing fees on the prepaid account because those fees are not finance charges, as described in new comment 4(b)(11)–1.iii.

General policy and practice of declining transactions that will create a negative balance. To qualify for the exception in new § 1026.61(a)(4), new § 1026.61(a)(4)(ii)(A) provides that with respect to any prepaid account that is accessible by the prepaid card, a prepaid account issuer also must have established a policy and practice of either declining to authorize any transaction for which it reasonably believes the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized, or declining to authorize any such transactions except in two circumstances related to payment cushions and delayed load cushions as discussed below.

This prong is designed to limit the exception under new § 1026.61(a)(4) to situations where the prepaid account issuer generally is not authorizing transactions that will take the asset feature of the prepaid account negative. The Bureau believes that this prong will help ensure that consumers do not develop a substantial negative balance on their prepaid asset accounts that most do not intend to use as a credit account, which could pose risks to consumers by compromising their ability to manage and control their finances. This prong is intended to address concerns raised by industry commenters that the proposed circumstances in which a prepaid card would be a credit card captured (1) ''force pay'' transactions, (2) payment cushions; and (3) delayed load cushions, while also balancing consumer group concerns that any such limited exceptions be cabined in a way that does not undermine the broader rule. Thus, the final rule does not cover overdraft credit features under Regulation Z where these three types of credit are extended through a negative balance on the asset feature of the prepaid account, so long as the prepaid account issuer generally does not charge credit-related fees for the credit.

As discussed above, ''force pay'' transactions occur where the prepaid account issuer is required by card network rules to pay a transaction even though there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction at settlement. This can occur, for example, when a transaction is either not authorized in advance, or there were sufficient or available funds in the asset feature of the prepaid account at the time the transaction is

authorized, but there are insufficient or unavailable funds in the asset feature at the time the transaction is settled, and a negative balance results on the asset feature when the transaction is paid.

New comment 61(a)(4)(ii)(A)–1 makes clear that a prepaid account issuer is not required to receive an authorization request for each transaction to comply with this requirement. Nonetheless, the prepaid account issuer generally must establish an authorization policy as described above and have reasonable practices in place to comply with its established policy with respect to the authorization requests it receives. In that case, a prepaid account issuer is deemed to satisfy the requirement set forth in new § 1026.61(a)(4)(ii)(A) even if a negative balance results on the prepaid account when a transaction is settled.

New comment 61(a)(4)(ii)(A)–2 also makes clear that a prepaid account issuer may still satisfy the requirements set forth in § 1026.61(a)(4)(ii)(A) even if a negative balance results on the asset feature of the prepaid account because the prepaid account issuer debits the amount of any provisional credit that was previously granted on the prepaid account, as specified in final Regulation E § 1005.11, so long as the prepaid account issuer otherwise complies with the conditions set forth in new § 1026.61(a)(4). For example, under new § 1026.61(a)(4), a prepaid account issuer may not impose a fee or charge enumerated under new § 1026.61(a)(4)(ii)(B) with respect to such a negative balance.

This exception also allows a prepaid account issuer to adopt a payment cushion where the issuer would authorize transactions that would take the account balance negative by no more than $10 at the time the transaction is authorized. The Bureau believes that this $10 payment cushion will benefit consumers without allowing consumers to develop a substantial negative balance on their prepaid asset accounts, which could pose risks for consumers.

As discussed above, one consumer group commenter suggested that prepaid account issuer should be prevented from advertising or disclosing this payment cushion in order to take advantage of any exception of this credit from coverage under Regulation Z. The final rule does not prevent a prepaid account issuer from advertising or disclosing this payment cushion to consumers in order to take advantage of the exception in new § 1026.61(a)(4). The Bureau does not believe that it is necessary to restrict prepaid account issuers from advertising or disclosing this payment cushion to consumers, given the de minimis amount of credit ($10) that they may offer through the payment cushion. The Bureau believes that such a restriction may discourage prepaid account issuers from offering such a payment cushion, which could harm consumers.

In addition, the exception allows a prepaid account issuer to adopt a delayed load cushion. Specifically, in cases where the prepaid account issuer has received an instruction or confirmation for an incoming EFT originated from a separate asset account to load funds to the prepaid account or where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account but in either case the funds from the separate asset account have not yet settled, a prepaid account issuer may still qualify for the exception in new § 1026.61(a)(4) if the prepaid account authorizes transactions that take the prepaid account negative, so long as the transactions will not cause the account balance to become negative at the time of the authorization by more than the incoming or requested load amount, as applicable.

The Bureau recognizes that, in some cases, a prepaid account issuer may receive instructions or confirmation with respect to incoming EFTs from a separate asset account to load funds to the prepaid account, such as in cases involving direct deposits of salaries or government benefits. In such cases, prepaid account issuers may provide access to these funds to prepaid cardholders based on the instructions or confirmations even though the prepaid account issuer's transfer of funds has not yet settled, and therefore the prepaid account issuer does not have the funds.

In addition, the Bureau also recognizes that, in some cases, prepaid account issuers may receive a request from the consumer to load funds to the prepaid account from a separate asset account, including where the consumer, in the course of a transaction, requests a load from a deposit account or uses a debit card to cover the amount of the transaction. This can occur, for example, when a consumer authorizes a remittance through a mobile wallet which is linked to a checking account, the consumer requests that funds be taken from the consumer's checking account to pay for the remittance, and the remittance is sent before the incoming transfer of funds from the checking account is complete. In this case, the prepaid account issuer is extending credit through a negative balance on the asset feature of the prepaid account until the incoming transfer of funds from the checking account is complete.

In these two situations, the Bureau believes that it would benefit consumers to receive access to the funds prior to settlement, so long as the consumer generally is not charged credit-related fees. The Bureau does not believe these situations raise the same concerns as overdraft credit features offered by prepaid account issuers in connection with prepaid accounts.

To facilitate compliance, new comment 61(a)(4)(ii)(A)–3.i provides examples of cases where the prepaid account issuer may receive an instruction or confirmation for an incoming EFT originating from a separate asset account to load funds to the prepaid account. This comment describes that such instructions or confirmations may occur in relation to a direct deposit of salary from an employer and a direct deposit of government benefits. New comment 61(a)(4)(ii)(A)–3.ii also provides an example of a case where the prepaid account issuer may receive a request from the consumer to load funds to the prepaid account from a separate asset account. This comment describes an example where the consumer, in the course of a transaction, requests a load from a deposit account or uses a debit card to cover the amount of the transaction if there are insufficient funds in the asset feature of the prepaid account to pay for the transaction.

New comment 61(a)(4)(ii)(A)–4 also makes clear that the two circumstances described above in which a prepaid account issuer can authorize transactions that create a negative balance on the asset feature of the prepaid account, namely payment cushions and delayed load cushions, are not mutually exclusive. For example, assume a prepaid account issuer has adopted the $10 payment cushion and the delayed load cushion. Also, assume the prepaid account issuer has received an instruction or confirmation for an incoming EFT originating from a separate asset account to load funds to the prepaid account, but the prepaid account issuer has not received the funds from the separate asset account. In this case, a prepaid account issuer satisfies this requirement if the amount of a transaction at authorization will not cause the prepaid account balance to become negative at the time of the authorization by more than the requested load amount plus the $10 payment cushion.

No credit-related fees except for fees or charges for the actual costs of the collecting the credit if otherwise permitted by law. To qualify for the

exception in new § 1026.61(a)(4), new § 1026.61(a)(4)(ii)(B) provides that with respect to prepaid accounts that are accessible by the prepaid card, the prepaid account issuer may generally not charge credit-related fees on the asset feature of the prepaid account. Specifically, the exception would only apply where the prepaid account issuer does not charge the following fees: (1) Any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. These fees do not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available; (2) any fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature, except that a prepaid account issuer may impose fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law; or (3) any fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

Thus, this prong prevents a prepaid account issuer from charging credit-related fees for the credit extended through a negative balance on the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law. Because the credit extended through the exception in new § 1026.61(a)(4) is intended to be limited to inadvertent or de minimis credit, the Bureau believes that it is appropriate to limit the exception to instances in which the prepaid account issuer does not charge credit-related fees for the credit, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law. In addition, the Bureau believes that preventing prepaid account issuers from generally charging credit-related fees to take advantage of this exception will provide greater incentive to prepaid account issuers to limit the circumstances resulting in ''forced pay'' transactions extended through this exception. For the reasons discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that it is appropriate to generally cover overdraft credit features offered by prepaid account issuers where, with respect to the prepaid account accessible by the prepaid card: (1) The prepaid account issuer has a policy and practice of authorizing transactions (outside of the payment cushion and delayed load circumstances described above) where there are insufficient or unavailable funds in the prepaid account to cover the amount of the transaction at authorization; or (2) a prepaid account issuer charges credit-related fees for credit extended through a negative balance on the asset feature of the prepaid account beyond fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law.

To facilitate compliance, new comment 61(a)(4)(ii)(B)–1 clarifies that new § 1026.61(a)(4)(ii)(B) does not prohibit a prepaid account issuer from charging different terms on different prepaid account programs. For example, the terms may differ between a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program and a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts. The Bureau recognizes that prepaid account issuer may offer prepaid programs for different purposes and offer different services on those prepaid account programs. Those service differences may impact the pricing on the prepaid programs. The Bureau believes that requiring prepaid account issuers to charge the same fees on all of its prepaid account programs to take advantage of this exception would make the exception generally unavailable for most prepaid account issuers.

New § 1026.61(a)(4)(ii)(B)(*1*) provides that to qualify for the exception in new § 1026.61(a)(4), a prepaid account issuer may not charge on the prepaid account any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. These fees do not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available. New comment 61(a)(4)(ii)(B)(*1*)–1 clarifies the types of fees or charges that are included and not included under new § 1026.61(a)(4)(ii)(B)(*1*). New comment 61(a)(4)(ii)(B)(*1*)–1.i.A clarifies that the types of fees or charges described in new § 1026.61(a)(4)(ii)(B)(*1*) include daily, weekly, monthly, or other periodic fees assessed each period that a prepaid account has a negative balance or is in ''overdraft'' status.

New comment 61(a)(4)(ii)(B)(*1*)–1.i.B also clarifies that the types of fees or charges described in new § 1026.61(a)(4)(ii)(B)(*1*) include daily, weekly, monthly, or other periodic fees where the amount of the fee that applies each period is higher if the consumer is enrolled in a purchase cushion as described in new § 1026.61(a)(4)(ii)(A)(*1*) or a delayed load cushion as described in new § 1026.61(a)(4)(ii)(A)(*2*) during that period. For example, assume that a consumer will pay a fee of $10 to hold the prepaid account if the consumer is not enrolled in a purchase cushion or a delayed load cushion during that month, or alternatively, the consumer will pay a fee of $15 to hold the prepaid account if the consumer is enrolled in a purchase cushion or delayed load cushion during that period. The $15 charge is a charge described in new § 1026.61(a)(4)(ii)(B)(*1*) because the amount of the fee to hold the prepaid account is higher based on whether the consumer is participating in the payment cushion or delayed load cushion during that period.

New comment 61(a)(4)(ii)(B)(*1*)–1.ii clarifies that new § 1026.61(a)(4)(ii)(B)(*1*) does not prohibit a daily, weekly, monthly, or other periodic fee to hold the prepaid account so long as the amount of the fee is not higher based on whether the consumer is enrolled in a purchase cushion or a delayed load cushion during that period, whether or how much credit has been extended during that period, or the amount of credit that is available during that period.

New § 1026.61(a)(4)(ii)(B)(*2*) provides that to qualify for the exception in new § 1026.61(a)(4), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature. New comment 61(a)(4)(ii)(B)(*2*)–1 provides examples of fees that are and are not fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature. New comment 61(a)(4)(ii)(B)(*2*)–1.i provides that fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative

balance on the asset feature include: (1) A fee imposed because the balance on the prepaid account becomes negative; (2) interest charges attributable to a periodic rate that applies to the negative balance; (3) any fees for delinquency, default, or a similar occurrences that result from the prepaid account having a negative balance or being in ''overdraft'' status, except that the actual costs to collect the credit may be imposed if otherwise permitted by law; and (4) late payment fees.

Consistent with the proposal, a prepaid card is a credit card under the final rule if the prepaid account issuer charges a late fee with respect to the credit.[703] With regard to late payment fees in particular, the Bureau is concerned that such fees could be structured to take the place of a per transaction fee for a credit extension on the prepaid account. For example, if a late fee were not included as a enumerated fee under new § 1026.61(a)(4)(ii)(B), a prepaid account issuer could provide that payment of the overdraft is due immediately and charge a late fee each day that the overdraft balance remains outstanding. The Bureau believes such a late fee would function as a fee for a negative balance that is not permitted to be imposed on the prepaid account if the prepaid account issuer intends to qualify for the exception in new § 1026.61(a)(4). Thus, the final rule provides that a late fee may not be imposed on the asset feature of a prepaid account if the prepaid account issuer intends to qualify for the exception in new § 1026.61(a)(4). Nonetheless, new § 1026.61(a)(4)(ii)(B)(*2*) and new comment 61(a)(4)(ii)(B)(*2*)–1.ii.A provide that a prepaid account issuer may impose fees on the asset feature of the prepaid account for actual collection costs, including attorney's fees, and still qualify for the exception in new § 1026.61(a)(4) if those fees are otherwise permitted by law. The Bureau does not believe that allowing a prepaid account issuer to qualify for the exception in new § 1026.61(a)(4), even if the prepaid account issuer imposes actual collection costs to collect the credit, poses the same evasion risks discussed above in regard to late fees because these costs must be the actual costs incurred by the prepaid account issuer to collect the credit, and those fees must be otherwise permitted by law.

New § 1026.61(a)(4)(ii)(B)(*3*) provides that to qualify for the exception in new § 1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that are higher when credit is extended on the asset feature or when there is a negative balance on the asset feature. New comment 61(a)(4)(ii)(B)(*3*)–1 provides examples of fees that are and are not fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

New comment 61(a)(4)(ii)(B)(*3*)–1.i.A provides that new § 1026.61(a)(4)(ii)(B)(*3*) includes transaction fees where the amount of the fee is higher based on whether the transaction accesses only asset funds in the asset feature or accesses credit. For example, a $15 transaction charge is imposed on the asset feature each time a transaction is authorized or paid when there are insufficient or unavailable funds in the asset feature at the time of the authorization or settlement. A $1.50 fee is imposed each time a transaction is paid entirely from funds in the asset feature. The $15 charge is a charge where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature because the transaction fee is higher when the transaction accesses credit than when the transaction accesses only asset funds in the asset feature.

New comment 61(a)(4)(ii)(B)(*3*)–1.i.B provides that new § 1026.61(a)(4)(ii)(B)(*3*) includes a fee for a service on the prepaid account where the amount of the fee is higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges a higher fee for an ATM balance inquiry requested on the prepaid account if the balance inquiry is requested when there is a negative balance on the asset feature than the amount of fee imposed when there is a positive balance on the asset feature, the balance inquiry fee is a fee described in new § 1026.61(a)(4)(ii)(B)(*3*) because the amount of the fee is higher based on whether it is imposed when there is a negative balance on the asset feature.

Nonetheless, new comment 61(a)(4)(ii)(B)(*3*)–1.ii.A provides that new § 1026.61(a)(4)(ii)(B)(*3*) does not include transaction fees on the prepaid account where the amount of the fee imposed when the transaction accesses credit does not exceed the amount of the fee imposed when the transaction only accesses asset funds in the prepaid account. For example, assume a $1.50 transaction charge is imposed on the prepaid account for each paid transaction that is made with the prepaid card, including transactions that only access asset funds, transactions that take the account balance negative, and transactions that occur when the account balance is already negative. The $1.50 transaction charge imposed on the prepaid account is not prohibited under new § 1026.61(a)(4)(ii)(B) because the fee or charge is not higher when credit is extended on the asset feature or when there is a negative balance on the asset feature. Thus, under the final rule, a prepaid account issuer would not need to waive per transaction fees for credit extensions where the per transaction fee is not higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

New comment 61(a)(4)(ii)(B)(*3*)–1.ii.B provides that new § 1026.61(a)(4)(ii)(B)(*3*) does not include a fee for a service on the prepaid account where the amount of the fee is not higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges the same amount of fee for an ATM balance inquiry regardless of whether there is a positive or negative balance on the asset feature, the balance inquiry fee is not a fee described in new § 1026.61(a)(4)(ii)(B).

New § 1026.61(a)(4)(ii)(C) also makes clear that a prepaid account issuer may still satisfy the exception in new § 1026.61(a)(4) even if it debits fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in new § 1026.61(a)(4)(ii)(B), as discussed above. New comment 61(a)(4)(ii)(C)–1 explains that a fee or charge not otherwise covered by new § 1026.61(a)(4)(ii))(B) does not become covered by that provision simply because there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee when it is imposed. For example, assume that a prepaid account issuer imposes a fee for an ATM balance inquiry and the amount of the fee is not higher based on whether credit is extended or whether there is a negative balance on the prepaid account. Also assume that when

[703] Under the proposal, a prepaid card would have been a credit card if it 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 late fee is a fee described in § 1026.4(c)(2) and thus under the proposal, a prepaid card would have been a credit card if a late fee was charged for the credit.

the fee is imposed, there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee. The ATM balance inquiry fee does not become a fee covered by new § 1026.61(a)(4)(ii)(B) because the fee is debited from the prepaid account balance when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the fee at the time it is imposed.

61(a)(5) Definitions

New § 1026.61(a)(5) sets forth definitions of the following terms that are used in new § 1026.61 and throughout the regulation in relation to hybrid prepaid-credit cards: (1) Prepaid account; (2) prepaid card; (3) prepaid account issuer; (4) affiliate; (5) business partner; (6) asset feature; (7) credit feature; and (8) separate credit feature. Each of these definitions is discussed in more detail below.

Prepaid Account and Prepaid Card

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. Specifically, existing 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, existing 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.

Under the proposal, different rules generally would have applied in Regulation Z depending on whether credit is accessed by a card or device that accesses a prepaid account or a card or device that accesses another type of asset account. To assist compliance with the regulation, the proposal would have defined ''debit card'' for purposes of Regulation Z in proposed § 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 have specified that it does not include a prepaid card. Proposed § 1026.2(a)(15)(v) would have defined ''prepaid card'' to mean ''any card, code, or other device that can be used to access a prepaid account.'' The proposal would have defined ''prepaid account'' in proposed § 1026.2(a)(15)(vi) to mean a prepaid account as defined in proposed Regulation E § 1005.2(b)(3). Proposed comment 2(a)(15)–6 would have provided that the term ''prepaid card'' in proposed § 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. That proposed comment also would have provided 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 have included 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 been credit cards unless they were subject to an agreement to extend credit.

Nonetheless, the Bureau solicited 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 been considered prepaid accounts for purposes of error resolution, disclosure, and other purposes under Regulation E. The Bureau solicited 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 solicited comment on any implications of treating these products as prepaid accounts under Regulation Z but not Regulation E.

Several industry commenters, including programs managers and a payment network, indicated that these products should not be covered by Regulation Z if they are not prepaid accounts under Regulation E. One consumer group commenter indicated that these accounts should be covered by Regulation Z if they offer overdraft credit even if they are not prepaid accounts under Regulation E. This commenter indicated that while those types of accounts would rarely, if ever, have a credit or overdraft feature, the Bureau should to include prepaid cards in the Regulation Z definition of credit card if they access credit or overdraft features in connection with such accounts.

One program manager also indicated that the Bureau should exempt student cards and payroll cards from the overdraft provisions in the proposal under Regulation Z even if these cards access prepaid accounts as defined in Regulation E.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, consistent with the proposal, the final rule generally applies different rules in Regulation Z depending on whether credit is accessible by a hybrid prepaid-credit card that can access both a covered separate credit feature and the asset feature of a prepaid account as defined in new § 1026.61(a), or credit is accessed by a card or device that accesses another type of asset account.

Consistent with the proposal, as discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(iv) above, the term ''debit card'' is defined in new § 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, as defined in new § 1026.61. Under the final rule, the term ''debit card'' does not include a prepaid card, as defined in § 1026.61.

The final rule moves the definition of ''prepaid card'' from proposed § 1026.2(a)(15)(v) to new § 1026.61(a)(5)(vii) and adopts this definition as proposed. New § 1026.61(a)(5)(vii) defines ''prepaid card'' to mean any card, code, or other device that can be used to access a prepaid account. The final rule moves proposed comment 2(a)(15)–6 to new comment 61(a)(5)(vii)–1 and revises it. Consistent with proposed comment 2(a)(15)–6, new comment 61(a)(5)(vii)–1 clarifies that the term ''prepaid card'' in new § 1026.61(a)(5)(vii) includes any card, code, or other device that can be used to access a prepaid account, including a prepaid account number or other code. Proposed comment 2(a)(15)–6 also would have provided 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 Bureau has not adopted this part of proposed comment 2(a)(15)–6 because the final rule does not use the term ''credit accessed by a prepaid card.'' Instead, the final rule uses the term ''hybrid prepaid-credit card'' as defined in § 1026.61(a).

The Bureau is not exempting categorically student cards and payroll cards from the provisions in the final rule under Regulation Z even if these cards access prepaid accounts as defined in Regulation E and meet the definition of ''hybrid prepaid-credit card'' under new § 1026.61(a). These cards would be ''prepaid cards'' under new § 1026.61(a)(15)(vii) to the extent

that they are cards, codes, or other devices that can be used to access a prepaid account, including a prepaid account number or other code. In addition, these cards would be hybrid prepaid-credit cards to the extent they meet the definition in new § 1026.61(a). The Bureau does not believe that it is appropriate to categorically exclude these cards from the provisions in the final rule under Regulation Z to the extent these cards are ''hybrid prepaid-credit cards'' as defined in new § 1026.61(a). The Bureau believes that consumers holding student prepaid cards and payroll cards would benefit from the protections provided by Regulation Z if those prepaid cards meet the definition of ''hybrid prepaid-credit cards'' under new § 1026.61(a). In addition, the Bureau believes that it is appropriate to maintain consistency between the definitions of ''prepaid account'' in Regulation E § 1005.2(b)(3) and Regulation Z § 1026.61(a)(5)(v).

The final rule moves the definition of ''prepaid account'' from proposed § 1026.2(a)(15)(vi) to new § 1026.61(a)(5)(v) and adopts this definition as proposed. As discussed in the section-by-section analysis of Regulation E § 1005.2(b)(3)(ii) above, the term ''prepaid account,'' as defined in final Regulation E § 1005.2(b)(3)(ii), does not include, among other things, products such as gift cards, accounts established for distributing certain needs-tested government benefits that are excluded under Regulation E § 1005.15(a)(2), and certain types of health care and employee benefit accounts. The provisions in the final rule that apply to covered separate credit features accessible by hybrid prepaid-credit cards do not apply to cards or access devices that access these types of accounts because they are not ''prepaid accounts'' under final Regulation E § 1005.2(b)(3) or new Regulation Z § 1026.61(a)(5)(v). At this time, the Bureau does not believe that it is appropriate to include these accounts in the definition of ''prepaid account'' for purposes of new § 1026.61(a)(5)(v), when these accounts are not ''prepaid accounts'' for purposes of final § 1005.2(b)(3). The Bureau is unaware of any credit features currently associated with cards that access these types of accounts. At this time, the Bureau believes that it is appropriate to maintain consistency between the definitions of ''prepaid account'' in Regulation E § 1005.2(b)(3) and Regulation Z § 1026.61(a)(5)(v).

Prepaid Account Issuer, Affiliate, and Business Partner

The proposal did not define the terms ''prepaid account issuer,'' ''affiliate,'' or ''business partner.'' For the reasons discussed in the section-by-section analysis of § 1026.61, the Bureau is revising the circumstances from the proposal for when a prepaid card is a credit card (*i.e.,* hybrid prepaid-credit card) under Regulation Z. Under the final rule, new § 1026.62(a)(2)(i) provides that a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are satisfied: (1) The card can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

Definition of ''prepaid account issuer.'' New § 1026.61(a)(5)(vi) defines ''prepaid account issuer'' to mean a financial institution as defined in Regulation E § 1005.2(i) with respect to a prepaid account.

Definition of ''affiliate.'' New § 1026.61(a)(5)(i) defines ''affiliate'' to mean any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956.[704] This definition is consistent with how affiliate is used in other provisions in Regulation Z.[705]

Definition of ''business partner.'' New § 1026.61(a)(5)(iii) defines the term ''business partner'' for purposes of new § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards to mean a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where the person or its affiliate has ''an arrangement'' with a prepaid account issuer or its affiliate. As explained in new comment 61(a)(5)(iii)–1, a person that can extend credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate for purposes of new § 1026.61(a)(5)(iii) if the circumstances in either comment 61(a)(5)(iii)–1.i or comment 61(a)(5)(iii)–1.ii are met. First, new comment 61(a)(5)(iii)–1.i provides that an unaffiliated person that can extend credit is a business partner of the prepaid account issuer if the person that can extend credit or its affiliate has an agreement with the prepaid account issuer or its affiliate that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. New comment 61(a)(5)(iii)–1.i provides, however, that the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network together.

Second, new comment 61(a)(5)(iii)–1.ii provides that an unaffiliated person that can extend credit is a business partner of the prepaid account issuer if the person or its affiliate has a business, marketing, promotional agreement, or other arrangement with the prepaid account issuer or its affiliate where the agreement or arrangement provides that prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person that can extend credit; or the credit feature will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to link the separate credit feature to the prepaid account to be used as an overdraft credit feature); and (2) at the time of the marketing agreement or arrangement, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In this case, this requirement is satisfied even if there is no specific agreement between the parties that the card can access the separate credit feature, as described above under new comment 61(a)(5)(iii)–1.i. For example, this requirement is satisfied even if the draw, transfer, or authorization of the draw or transfer, from the separate credit feature is effectuated through a card network or payment network.

New comment 61(a)(5)(iii)–2 provides that a person (other than a prepaid account issuer or its affiliates) that can extend credit through a separate credit feature will be deemed to have an arrangement with the prepaid account issuer if the person that can extend credit, its service provider, or the person's affiliate has an arrangement with the prepaid account issuer, its service provider such as a program manager, or the issuer's affiliates. In that

[704] 12 U.S.C. 1841 *et seq.*

[705] *See, e.g.,* existing § 1026.32(b)(5).

case, the person that can extend credit will be a business partner of the prepaid account issuer. For example, if the affiliate of the person that can extend credit has an arrangement with the prepaid account issuer's affiliate, the person that can extend credit will be the business partner of the prepaid account issuer.

To prevent evasion of the protections provided in the final rule related to hybrid prepaid-credit cards, the Bureau believes that it is important to include an unaffiliated third party that can extend credit through a separate credit feature as a ''business partner'' of the prepaid account issuer where the person that can extend credit, or its affiliate, has a marketing agreement or arrangement with the prepaid account issuer, or its affiliate, and where, whether or not by agreement, the prepaid card can access the separate credit feature in the course of a transaction. Otherwise, the Bureau is concerned that without including such arrangements, prepaid account issuers or their affiliates could structure an arrangement with an unaffiliated third party that can extend credit, or its affiliate, to avoid forming an ''agreement,'' as discussed in new comment 61(a)(5)(iii)–1.i, that the card may be used to access the third party's credit feature as an overdraft credit feature when all the parties understand that this type of connection is occurring. Such a result could frustrate the operation of certain consumer protections provided in the final rule. The Bureau believes that when there is a marketing agreement or arrangement between the parties as described in new comment 61(a)(5)(iii)–1.ii.A, the parties have a sufficient connection such that the unaffiliated third party that can extend credit should understand when its credit feature is used as an overdraft credit feature with respect to a prepaid account, even if there is no specific agreement between the parties to that effect under new comment 61(a)(5)(iii)–1.i. Also, the Bureau believes that these types of links between the prepaid account issuer and the unaffiliated third party that can extend credit are likely to involve revenue sharing or payments between the two companies, and the pricing structure of the two accounts may be tied together. Thus, the Bureau believes that it is appropriate to consider these entities to be business partners in this context.

Asset Feature, Credit Feature, and Separate Credit Feature

As discussed in more detail in the section-by-section analysis of § 1026.61(b) below, the final rule requires that credit features that are accessible by a hybrid prepaid-credit card be structured as a separate credit feature—either a separate sub-account or account—rather than as a negative balance on the asset feature of a prepaid account. While a negative balance structure would be permissible where an issuer only offers incidental credit pursuant to new § 1026.61(a)(4),[706] an issuer that offers more extensive credit or charges credit-related fees using a negative balance structure would be subject to the credit card rules pursuant to new § 1026.61(a)(3), and would be in violation of the rule on account structure specified in new § 1026.61(b). Instead, under the final rule, a card issuer must structure the credit feature as a separate credit feature, either as a separate credit account or as a credit subaccount of a prepaid account that is separate from the asset feature of the prepaid account. The separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under new § 1026.61(a)(2)(i).

The Bureau defines the terms ''asset feature,'' ''credit feature,'' and ''separate credit feature'' to effectuate the provisions set forth in new § 1026.61(b), as well as other provisions set forth in new § 1026.61 and in Regulation Z generally that relate to hybrid prepaid-credit cards. These defined terms are discussed in more detail below.

Definition of ''asset feature.'' Under the final rule, the term ''asset feature'' in new § 1026.61(a)(5)(vii) is defined to mean an asset account that is a prepaid account, or an asset subaccount of a prepaid account. As described above and in more detail below in the section-by-section analysis of § 1026.61(b), a card issuer cannot structure a credit feature as a negative balance on the asset feature of a prepaid account, unless the conditions in new § 1026.61(a)(4) are met.

Definition of ''credit feature.'' The term ''credit feature'' is defined in new § 1026.61(a)(5)(iv) to mean either: (1) A separate credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card, or (2) a negative balance on an asset feature of a prepaid account through which credit can be extended in connection with a prepaid card. As discussed above, under new § 1026.61(b), a card issuer may not structure a credit feature as a negative balance on the asset feature of the prepaid account, except as permitted under new § 1026.61(a)(4).

New comment 61(a)(5)(iv)–1 provides that the definition of ''credit feature'' set forth in new § 1026.61(a)(5)(iv) only defines that term for purposes of Regulation Z in relation to credit offered in connection with a prepaid account or prepaid card. This comment explains that this definition does not impact when an account, subaccount or negative balance is a credit feature under Regulation Z with respect to credit in relation to a checking account or other transaction account that is not a prepaid account, or a debit card. *See, e.g.,* existing comment 2(a)(15)–2.ii.A and existing comment 4(b)(2)–1 where the term credit feature is used in relation to a debit card or asset account other than a prepaid account.

One issuing credit union indicated that the Bureau should clarify that where a prepaid account is loaded with funds using a deposit account where an overdraft protection program or overdraft line of credit is activated, the prepaid card does not become a credit card under the proposal because the overdraft protection program or overdraft line of credit was activated. New comment 61(a)(5)(iv)–2 provides that a ''credit feature'' for purposes of § 1026.61(a)(5)(iv) does not include an asset account other than a prepaid account that has an attached overdraft feature. For example, assume that funds are loaded or transferred to a prepaid account from an asset account (other than a prepaid account) on which an overdraft feature is attached. The asset account is not a credit feature under new § 1026.61(a)(5)(iv) even if the load or transfer of funds to the prepaid account triggers the overdraft feature that is attached to the asset account.

Definition of ''separate credit feature.'' New § 1026.61(a)(5)(viii) defines ''separate credit feature'' to mean a credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card that is separate from the asset feature of the prepaid account. This term does not include a negative balance on an asset feature of a prepaid account. As discussed above, under new § 1026.61(b), a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features

[706] If a prepaid account issuer complies with the exception in § 1026.61(a)(4) with respect to a prepaid account that is accessed by a prepaid card, the prepaid card is not a hybrid prepaid-credit card under Regulation Z, and thus is not a credit card under Regulation Z. The prepaid account issuer is not a card issuer under § 1026.2(a)(7) and thus § 1026.61(b) does not apply to the overdraft credit feature accessed by the prepaid card.

described in new § 1026.61(a)(4). This separate credit feature is a ''covered separate credit feature'' under new § 1026.61(a)(2)(i).

61(b) Structure of Credit Features Accessible by Hybrid Prepaid-Credit Cards

The Bureau's Proposal

Under the proposal, credit plans, including overdraft services and overdraft lines of credit, that are directly accessed by certain prepaid cards would have been subject to the rules for credit cards under Regulation Z. In particular, proposed comment 2(a)(15)–2.i.F would have provided 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.

The proposal made clear that the Bureau intended that the credit card rules apply broadly to a range of product structures. In the proposal, for instance, the Bureau specifically stated that the proposal was intended to cover: (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 would have been credit accessed by a prepaid card that is a credit card under the proposal, regardless of whether the person established a separate credit account to extend the credit or whether the credit was simply reflected as a negative balance on the prepaid account.

In addition to proposing a broad scope of coverage, the Bureau sought to explore practical considerations regarding product structure and operations for credit that would be subject to the credit card rules. Specifically, in the proposal, the Bureau stated its belief that creditors would tend to establish separate credit accounts to extend credit accessed by the prepaid card that is a credit card, instead of having the credit balance be reflected as a negative balance on the prepaid account, because creditors generally would find that separate credit accounts aid compliance with the periodic statement requirements in proposed §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) and the offset provisions in proposed § 1026.12(d)(3) that would apply to credit card accounts accessed by prepaid cards. The Bureau solicited comment on whether creditors would likely establish separate credit accounts, instead of reflecting the credit balance as a negative balance on the prepaid account. The Bureau also solicited 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.

Comments Received

The commenters that responded to the Bureau's questions on this issue universally supported separate account structures. Specifically, one industry trade association stated that it believed a credit feature that is accessed by a prepaid card that is a credit card under the proposal should not be structured as a negative prepaid account balance. This commenter pointed out that, if an account is a ''dual'' account, the overdraft line of credit would only be accessed if a transaction amount were more than the amount in the prepaid account, and such a transaction would create two distinct balances. Similarly, one consumer group commenter stated with respect to credit accessed by a prepaid card that is a credit card, the Bureau should require the credit feature to be structured as a separate account, rather than reflected as a negative balance on the prepaid account. This commenter indicated that allowing credit to be reflected solely as a negative balance on the prepaid account would be confusing to consumers and would undercut the message that the consumer is being given credit, and being charged for credit.

The Final Rule

After consideration of these comments and additional internal analysis regarding transparency and compliance concerns, in the final rule, the Bureau requires that credit features that are accessible by a hybrid prepaid-credit card be structured as a separate credit feature—either a separate sub-account or account—rather than as a negative balance on the asset feature of a prepaid account. While a negative balance structure would be permissible where an issuer only offers incidental credit pursuant to new § 1026.61(a)(4),[707] an issuer that offers more extensive credit or charges credit-related fees using a negative balance structure would be subject to the credit card rules, pursuant to new § 1026.61(a)(3), and would be in violation of the rule on account structure specified in new § 1026.61(b). Instead, under the final rule, a card issuer must structure the credit feature as a separate credit feature, either as a separate credit account, or as a credit subaccount of a prepaid account that is separate from the asset feature of the prepaid account. The separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under new § 1026.61(a)(2)(i).

The Bureau believes that this structural requirement will make it substantially easier for creditors and consumers alike to implement and understand credit accessible via a hybrid prepaid-credit card under a credit card regime. Regulation Z's open-end rules are generally drafted with the assumption that the product in question is a pure credit product, without substantial positive funds. For example, existing § 1026.11(a) generally provides that creditors must refund any positive balances on the credit account to the consumer within six months. And, as discussed in more detail in the section-by-section analysis of § 1026.4(a) above, the rules for defining finance charges in the credit card context generally treat all transaction charges as finance charges, which makes sense when all transactions are generally assumed to involve use of credit.

But because hybrid prepaid-credit cards by their nature involve consumer assets as well as use of credit, bifurcating the asset feature from the credit feature makes application of the credit card rules more intuitive in a number of respects. For example, as discussed in more detail in the section-by-section analysis of § 1026.4(b)(11)(ii) above, it provides a structure by which general transaction fees that are imposed in the same amount for any transaction conducted on the prepaid account—regardless of whether there are sufficient positive funds in the account—to be excluded from the finance charge. This both makes the program easier for the prepaid account issuer to operate and easier for the

[707] If a prepaid account issuer complies with the exception in § 1026.61(a)(4) with respect to a prepaid account that is accessed by a prepaid card, the prepaid card is not a hybrid prepaid-credit card under Regulation Z, and thus is not a credit card under Regulation Z. The prepaid account issuer is not a card issuer under § 1026.2(a)(7) and thus, § 1026.61(b) does not apply to the overdraft credit feature accessed by the prepaid card.

consumer to understand, so that the finance charge reflects the costs associated with the use of credit. As discussed above, this implementation is also more generally consistent with comments received in response to the proposed rule that urged the Bureau to include only differentiated and unique fees imposed when credit is extended in the definition of finance charge, rather than also including fees that are the same for purely positive balance transactions.

Bifurcating the two features also will make it easier to apply standard credit card requirements, such as periodic statements requirements and no-offset rules in the prepaid context. Specifically, the periodic statement requirements in § 1026.7(b)(1) and (10) (which implement TILA section 127(b)(1) and (8) respectively) require card issuers to disclose for each billing cycle both the outstanding balance in the account at the beginning of statement period and the outstanding balance in the account at the end of the period.[708] In addition, because of the offset restrictions in final § 1026.12(d) (which implements TILA section 169) [709] and the due date and 21-day timing requirements for periodic statements in final § 1026.7(b)(11)and in final § 1026.5(b)(2)(ii)(A) (which implement TILA sections 127(b)(12) and (o) and TILA section 163 respectively),[710] incoming deposits to the asset feature of the prepaid account could not be applied automatically to repay the negative balance on the asset balance of the prepaid account when those incoming deposits are received. Instead, with respect to a covered separate credit feature accessible by hybrid prepaid-credit card, a card issuer (1) is required to adopt reasonable procedures designed to ensure that periodic statements for the covered separate credit features 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 (2) can move funds automatically from the asset account held by the card issuer to the covered separate credit feature held by the card issuer to pay some or all of the credit card debt on the covered separate credit feature 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). Even if card issuers were able to identify methods of satisfying those requirements that were technically compliant with the credit card rules using a negative balance account structure, the Bureau believes that consumers would have a harder time understanding the operation of their accounts and their rights under such a system.

Accordingly, the Bureau believes that use of its authority under TILA section 105(a) to add the provisions in new § 1026.61(b) is necessary and proper to effectuate the purposes of TILA to help ensure the informed use of the credit or charge card account. 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 consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit.[711] The Bureau believes that requiring credit features accessible by hybrid prepaid-credit cards to be structured as separate credit features will promote the purposes of TILA by ensuring that Regulation Z's periodic statement disclosures are clear to consumers and that card issuers are complying with the offset restrictions and due date requirements in TILA in a manner that is transparent to consumers.

The Bureau recognizes under this requirement, card issuers will be required after the final rule becomes effective to structure any overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner as a separate credit feature, except to the extent that overdraft credit feature meets the conditions set forth in new § 1026.61(a)(4). To the extent a prepaid account issuer has been offering overdraft credit as a negative balance on prepaid accounts prior to these rules becoming effective, the prepaid account issuer will need to restructure its overdraft credit feature as a separate credit feature if the overdraft credit feature does not meet the conditions set forth in new § 1026.61(a)(4). Nonetheless, as discussed above, the Bureau believes that bifurcating the two accounts is likely to make it easier for card issuers to comply with the Regulation Z requirements, such as the periodic statement and offset provisions discussed above, that will apply to the overdraft credit feature once the final rule becomes effective and facilitate consumers' understanding of the operation of their accounts and their rights with respect to each account.

To provide additional clarity on the provisions in new § 1026.61(b), new comment 61(b)–1 provides that if a credit feature that is accessible by a hybrid prepaid-credit card is structured as a subaccount of the prepaid account, the credit feature must be set up as a separate balance on the prepaid account such that there are at least two balances on the prepaid account—the asset account balance and the credit account balance.

New comment 61(b)–2 provides guidance on how a card issuer may comply with the requirement in new § 1026.61(b). New comment 61(b)–2.i provides that if at the time a prepaid card transaction is initiated there are insufficient or unavailable funds in the asset feature of the prepaid account to complete the transaction, credit must be drawn, transferred, or authorized to be drawn or transferred from the covered separate credit feature at the time the transaction is authorized. The card issuer may not allow the asset feature on the prepaid account to become negative and draw or transfer the credit from the covered separate credit feature at a later time, such as at the end of the day. The card issuer must comply with the applicable provisions of this regulation with respect to the credit extension from the time the prepaid card transaction is authorized. Because of the offset prohibition set forth in final § 1026.12(d) and the due date and 21-day timing requirements for periodic statements in final § 1026.7(b)(11) and in final § 1026.5(b)(2)(ii)(A) respectively, incoming deposits to the asset feature of the prepaid account could not be applied automatically to repay the negative balance on the asset balance of the prepaid account when those incoming deposits are received. Thus, new comment 61(b)–2.i makes clear that a card issuer may not allow the asset feature on the prepaid account to become negative and draw or transfer the credit from the covered separate credit feature at a later time, such as at the end of the day, to ensure that the card issuer is complying with these Regulation Z provisions in a manner that is clear to consumers.

New comment 61(b)–2.ii provides that for transactions where there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction at the time it settles, and the prepaid transaction either was not authorized in advance or the transaction was authorized and there were sufficient or available funds in the prepaid account at the time of authorization to cover the transaction, credit must be drawn from the covered separate credit feature to settle these

[708] 15 U.S.C. 1637(b)(1) and (8).

[709] 15 U.S.C. 1666h(a).

[710] 15 U.S.C. 1637(b)(12), and (o) and 1666b.

[711] 15 U.S.C. 1601.

transactions. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions of this regulation from the time the transaction is settled.

New comment 61(b)–2.iii provides that if a negative balance would result on the asset feature in circumstances other than those described in new comment 61(b)–2.i and ii, credit must be drawn from the covered separate credit feature to avoid the negative balance. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions in this regulation from the time credit is drawn from the covered separate credit feature. For example, assume that a fee for an ATM balance inquiry is imposed on the prepaid account when there are insufficient or unavailable funds to cover the amount of the fee when it is imposed. Credit must be drawn from the covered separate credit feature to avoid a negative balance. The Bureau expects that the card issuer will make it clear to consumers in the credit arrangement that credit will be drawn from the covered separate credit feature to avoid a negative balance on the asset feature of the prepaid account, including if applicable for fees imposed on the prepaid account where there are insufficient or unavailable funds to cover the amount of the fee when it is imposed.

61(c) Timing Requirement for Credit Card Solicitation or Application With Respect to Hybrid Prepaid-Credit Cards

As discussed in more detail in the section-by-section analysis of § 1026.12(a) above, credit cards generally may not be issued on an unsolicited basis. Thus, TILA section 132 and existing § 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 existing § 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's Proposal

The Bureau proposed 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 have required card issuers to wait at least 30 days after a prepaid account 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 that would be accessed by a prepaid card. In addition, card issuers would have been required to wait until at least 30 days after registration to open a credit card account for the holder of a prepaid account that would be accessed by the prepaid card. Moreover, if a card issuer has established an existing credit or charge card account with a holder of a prepaid account that is accessed by a prepaid, the card issuer would have been prevented from allowing an additional prepaid card obtained by the consumer from the card issuer to access the credit or charge card account, until at least 30 days after the consumer has registered the additional prepaid account.

Proposed § 1026.12(h)(2) would have defined ''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'' would have been the same as one used with respect to credit card disclosures set forth in existing § 1026.60(a)(1) that must be provided on or with credit card applications and solicitations. See the section-by-section analysis of § 1026.60 above. Consistent with existing § 1026.60, proposed § 1026.12(h)(2) also would have specified that a ''firm offer of credit,'' as defined in section 603(l) of the Fair Credit Reporting Act [712] for a credit or charge card, would be a solicitation for purposes of proposed § 1026.12(h).

Proposed comment 12(h)–1 would have explained that a prepaid card or prepaid account is registered, such that the 30-day timing requirement required by proposed § 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 timing requirement would have been 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.

Proposed comment 12(h)–2 would have provided a cross-reference to existing § 1026.12(a)(1) and proposed 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 analysis of § 1026.12(a)(1) above, proposed comment 12(a)(1)–7 would have provided 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 proposed § 1026.12(h). Proposed comment 12(h)–2 also would have cross-referenced § 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.

Comments Received

Several consumer group commenters urged the Bureau to extend the 30-day waiting period to 90 days. They noted that in 30 days, the consumer will only have completed one monthly cycle and will not have time to explore all the card's features. They believed that more time would help the consumer see whether she can manage her finances without resorting to credit at the end of the month. They also believed that a 90 day waiting period would help creditors to determine whether the consumer has the ability to repay credit.

Several commenters, including industry trade associations, an issuing bank, and a payment network, indicated that the Bureau should not adopt a waiting period. For example, one payment network said that this approach may create burdens and frustration for consumers who are explicitly seeking a prepaid account that has credit features. This commenter believed that the risks identified by the Bureau are more appropriately mitigated by requiring an affirmative consumer opt-in for any prepaid card to be linked with a credit feature, and that this opt-in can be given only after disclosures about the credit have been provided.

One digital wallet provider suggested that the Bureau clarify that this restriction does not apply to a digital wallet's funding sources. This commenter was concerned that applying the 30-day waiting period to digital wallets would effectively ban new consumers from linking a credit card as a funding source for their digital wallet.

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After consideration of the comments, the Bureau is adopting the 30-day waiting period largely as proposed. Specifically, the Bureau is moving proposed § 1026.12(h) to new § 1026.61(c) and is revising it to clarify the intent of the provision and to be

[712] 15 U.S.C. 1681a(l).

consistent with new § 1026.61(a).[713] Specifically, new § 1026.61(c)(1) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

New § 1026.61(c)(2) provides that for purposes of new § 1026.61(c), the term ''solicitation'' has the same meaning set forth in § 1026.60(a)(1). The term ''solicitation'' in existing § 1026.60(a)(1) 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. In addition, existing § 1026.60(a)(1) provides that a ''firm offer of credit'' as defined in section 603(l) of the Fair Credit Reporting Act[714] for a credit or charge card is a solicitation for purposes of existing § 1026.60(a)(1). The definition of ''solicitation'' in new § 1026.61(c)(2) is the same as the proposed definition of ''solicitation'' in proposed § 1026.12(h). The final rule cross-references the definition of ''solicitation'' in existing § 1026.60(a)(1) rather than repeating the same definition in new § 1026.61(c).

The Bureau is moving proposed comment 12(h)–1 to comment 61(c)–1 and is revising it to provide additional clarification. Consistent with the proposal, new comment 61(c)–1 provides that a prepaid card or prepaid account is registered, such that the 30-day timing requirement required by new § 1026.61(c) 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 timing requirement 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. New comment 61(c)–1 is revised from the proposal to provide guidance on situations where customer identification and verification are completed on a prepaid account before the account is opened. In that case, new comment 61(c)(1)–1 provides that the 30-day timing requirement begins on the day the prepaid account is opened.

The Bureau is moving proposed comment 12(h)–2 to new comment 61(c)–2 and is adopting it as proposed. The Bureau also is adding new comment 61(c)–3 to address situations where a hybrid prepaid-credit card is replaced or substituted for another hybrid prepaid-credit card. Specifically, new comment 61(c)–3 provides that a card issuer is not required to comply with new § 1026.61(c) when a hybrid prepaid-credit card is permitted to be replaced, or substituted, for another hybrid prepaid-credit card without a request or application under final § 1026.12(a)(2) and related commentary. For example, new § 1026.61(c) does not apply to situations where a prepaid account or credit feature that is accessible by a hybrid prepaid-credit card is replaced because of security concerns, and a new hybrid prepaid-credit card is issued to access the new prepaid account or credit feature without a request or application under final § 1026.12(a)(2).

With regard to comments urging the Bureau to clarify that the 30-day restriction does not apply to a digital wallet's funding sources, the Bureau is adding new comment 61(a)(1)–4 to provide guidance on the circumstances in which a prepaid account number for a digital wallet that is a prepaid account is a hybrid prepaid-credit card under new § 1026.61(a).

Specifically, new comment 61(a)(1)–4.i states that a digital wallet that is capable of being loaded with funds is a prepaid account under final Regulation E § 1005.2(b)(3). *See* final Regulation E § 1005.2(b)(3) and comment 2(b)(3)(i)–6. The comment explains that a prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card if it meets the conditions set forth in new § 1026.61(a). See new comment 61(a)(1)–4 for illustrations of this rule.

Thus, new § 1026.61(c) applies to a digital wallet that is capable of being loaded with funds (and thus is a prepaid account under final Regulation E § 1005.2(b)(3)), where the prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card as defined in new § 1026.61(a). The Bureau believes that this additional guidance will help relieve any concerns that the 30-day period would effectively ban new consumers from linking a credit card as a funding source for their digital wallet, except where the linked credit feature is a covered separate credit feature as defined in new § 1026.61(a)(2)(i).

With regard to the two conflicting sets of comments urging the Bureau to drop the 30-day waiting period entirely and conversely to expand it to 90 days, the Bureau has concluded based on additional consideration to adopt the 30-day waiting period as proposed. The Bureau continues to believe the 30-day waiting period would benefit consumers by separating the decisions to obtain and register the prepaid account from the decision to obtain a covered separate credit feature accessible by the hybrid prepaid-credit card. Nonetheless, the Bureau believes that extending the waiting period to 90 days seems unnecessary to ensure that a consumer can make an informed decision regarding whether to link the account to a covered separate credit feature. The Bureau believes that a longer waiting period may restrict consumers who are seeking prepaid accounts with covered separate credit features accessible by hybrid prepaid-credit cards.

The Bureau notes that if the prepaid account issuer offers the covered separate credit feature accessible by the hybrid prepaid-credit card, the prepaid account issuer is the ''card issuer'' for purposes of Regulation Z, including new § 1026.61(c). This is because the hybrid prepaid-credit card accessing the covered separate credit feature is a credit card, and existing § 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. If the prepaid account issuer's affiliate or business partner offers the covered separate credit feature accessible by a hybrid prepaid-credit card, both the person offering the covered separate credit feature and the prepaid account issuer are card issuers for purposes of new § 1026.61(c). In this case, under new comment 2(a)(7)–1.ii, the person offering the covered separate credit feature would be an agent of the prepaid account issuer.

The Bureau believes that use of its authority under TILA section 105(a) to add the provisions in new § 1026.61(c) is necessary and proper to effectuate the purposes of TILA to help ensure the informed use of the credit or charge card

[713] The proposal would have provided 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 only into particular prepaid accounts specified by the creditor. The proposal also would have applied the provisions in proposed § 1026.12(h) to credit card accounts accessed by such accounts numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the provisions in proposed § 1026.12(h) (renumbered as new § 1026.61(c)) related to these account numbers.

[714] 15 U.S.C. 1681a(l).

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 consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit.[715] Furthermore, TILA section 132 requires that no credit card shall be issued except in response to a request or application therefor.[716] In addition, the Bureau believes that the waiting period will, consistent with Dodd–Frank Act section 1032(a), ensure that the features of the covered separate credit feature offered in connection with 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 credit feature.

The Bureau believes that the requirement in new § 1026.61(c) of a 30-day waiting period for a prepaid card to access a covered separate credit feature will promote the informed and voluntary use of credit. Under new § 1026.12(c)(1), a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card. 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 covered separate credit feature accessible by a hybrid prepaid-credit card. The Bureau believes that consumers may be able to focus more effectively on the credit terms of the covered separate credit feature, and make a more informed decision whether to request such a credit feature, if the decision to accept the credit feature occurs apart from the process to register the card. Without these protections, card issuers may attempt to market the covered separate credit feature to prepaid cardholders at the time they purchase the prepaid card or at registration. The Bureau believes that without this provision, prepaid account issuers would be likely to provide solicitations or applications to the prepaid cardholder to open a covered separate credit feature accessible by a hybrid prepaid-credit card, or suggest that the prepaid cardholder allow an existing credit feature held by the prepaid cardholder to become a covered separate credit feature accessible by a hybrid prepaid-credit card, at the time the prepaid accounts are registered because prepaid account issuers will already be collecting information from the cardholders in order to register the prepaid accounts.

Without the waiting period, consumers may feel pressured to decide whether to add the covered separate credit feature without having the opportunity to fully consider the terms of the credit feature and the consequences of obtaining the credit feature. Therefore, the Bureau believes that a consumer's decision to add a covered separate credit feature accessible by a hybrid prepaid-credit card to the prepaid account should be distinct from the decision to obtain or register the prepaid card.

In addition, 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. This is consistent with EFTA section 905(a), which requires financial institutions to disclose the terms and conditions of EFTs involving a consumer's account. The Bureau also believes that requiring at least 30 days to elapse between the registration of a prepaid account and any offer of a covered separate credit feature accessible by a hybrid prepaid-credit card would enhance consumer understanding of the terms of the prepaid account and would help consumers to make more informed decisions regarding linking a covered separate credit feature accessible by a hybrid prepaid-credit card to the prepaid account.

As discussed in the section-by-section analysis of Regulation E § 1005.18(e)(3) above, existing customer identification requirements limit the functionality of most prepaid accounts prior to registration. In addition, the registration process is critical for application of full Regulation E protections under this final rule. For example, Regulation E § 1005.18(e)(3) provides that for all prepaid accounts, other than payroll card accounts and government benefit accounts, with respect to which the financial institution has not completed its identification and verification process (or for which the financial institution has no process), the financial institution is not required to provisionally credit the consumer's account in the event the financial institution takes longer than 10 or 20 business days, as applicable, to investigate and determine whether an error occurred.[717] If a card issuer were allowed to market covered separate credit features to consumers at the time of prepaid account registration, the Bureau is concerned that that consumers could believe that they are required to request that the covered separate credit feature accessible by a hybrid prepaid-credit card 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.

VI. Effective Date

The Bureau is generally establishing that this rule take effect on October 1, 2017, which is approximately 12 months from the issuance of this final rule. However, the Bureau is adopting several specific accommodations related to the effective date as set forth in § 1005.18(h), and a delayed effective date for the requirement to submit prepaid account agreements to the Bureau as described in § 1005.19(f).

As discussed in the section-by-section analysis of § 1005.18(h) above, the 12-month implementation period is a change from the proposal, which would have required that the rule generally take effect nine months following the publication of the rule in the **Federal Register,** with three months' additional leeway for certain disclosure-related requirements. The Bureau received many comments from industry, including trade associations, issuing banks, credit unions, program managers, payment networks, a payment processor, and a law firm writing on behalf of a coalition of prepaid issuers, arguing that the proposed nine- and 12-month compliance periods would be insufficient to implement the changes that would be required under the proposal. Upon consideration of the comments received, the Bureau believes that it is appropriate to provide a longer implementation period and to make a number of modifications and accommodations in the final rule to address particular concerns raised by commenters.

[715] 15 U.S.C. 1601.

[716] 15 U.S.C. 1642.

[717] See also new Regulation E § 1005.18(c)(2), which provides a modified version of the periodic statement alternative for prepaid accounts that cannot be or have not been verified by the financial institution.

For instance, final § 1005.18(h)(2)(i) sets forth an exception to the October 1, 2017 effective date that states that the disclosure requirements of Regulation E subpart A as modified by final § 1005.18 shall not apply to any disclosures that are provided, or that would otherwise be required to be provided, on prepaid account access devices, or on, in, or with prepaid account access devices and packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017. Accordingly, unlike the proposed rule, the final rule does not require that financial institutions pull and replace existing access devices and packaging material after the rule takes effect. In return, final § 1005.18(h)(2)(ii) requires that financial institutions provide notices of certain changes and updated initial disclosures to consumers who acquire prepaid accounts on or after October 1, 2017 via non-compliant packaging materials printed prior to the effective date. Final § 1005.18(h)(2)(iii) clarifies the requirements for providing notice of changes to consumers who acquired prepaid accounts before October 1, 2017. Final § 1005.18(h)(2)(iv) facilitates the delivery of notices of certain changes and updated initial disclosures for prepaid accounts governed by § 1005.18(h)(2)(ii) or (iii). Final § 1005.18(h)(3) provides an accommodation to financial institutions that do not have sufficient data in a readily accessible form in order to comply fully with the requirements for providing electronic and written account transaction history pursuant to final § 1005.18(c)(1)(ii) and (iii), respectively, and the summary totals of fees pursuant to final § 1005.18(c)(5) by October 1, 2017.

As discussed in the section-by-section analysis of § 1005.19(f) above, final § 1005.19(f)(2) sets forth a delayed effective date of October 1, 2018 for the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to final § 1005.19(b). The Bureau believes that the effective dates discussed herein strike the appropriate balance between providing consumers with necessary protections while giving financial institutions adequate time to comply with all aspects of this final rule.

VII. Section 1022(b)(2)(A) of the Dodd-Frank Act

A. Overview

In developing the final rule, the Bureau has considered the potential benefits, costs, and impacts required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons (which in this case would be the providers subject to the proposed rule), 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 of the Dodd-Frank Act, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer. 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 these agencies.

As discussed above, the final rule amends both Regulation E, which implements EFTA, and Regulation Z, which implements TILA, as well as the official interpretation to those regulations. The final rule creates comprehensive consumer protections for prepaid financial products. It expressly brings such products within the ambit of Regulation E as prepaid accounts and creates new provisions specific to such accounts. It also modifies certain Regulation E provisions as they apply to prepaid accounts, including provisions that currently apply to government benefit accounts and payroll card accounts.[718] Additionally, the final rule contains amendments to Regulations E and Z to regulate covered separate credit features accessible by a hybrid prepaid-credit card.

In applying the consumer protections in Regulation E to a broader set of consumer accounts, the Bureau furthers the statutory purposes of EFTA, which include providing a basic framework establishing the rights, liabilities, and responsibilities of participants in EFT systems and providing individual consumer rights. In addition, the Bureau believes that applying the consumer protections articulated in Regulation Z to covered separate credit features accessible by a hybrid prepaid-credit card 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. Major Provisions Discussed

Below, the Bureau considers the benefits, costs, and impacts of the following major provisions of the final rule:

1. The establishment of certain disclosures that financial institutions are required to provide to consumers (or, in certain circumstances, provide consumers access to) prior to the acquisition of a prepaid account and modifications of initial disclosures that are provided at account acquisition;
2. The application of Regulation E's periodic statement requirement to prepaid accounts and the establishment of an alternative that requires financial institutions to provide consumers access to certain types of account information;
3. The extension of Regulation E's limited liability and error resolution regime to all prepaid accounts, including provisional credit requirements in most circumstances;
4. The requirement that all issuers of prepaid accounts submit their prepaid account agreements to the Bureau on an ongoing basis, post publicly available prepaid account agreements on their own Web sites, and in limited circumstances, respond to consumers' requests for written copies of their account agreements; and
5. The modification and application of particular Regulation E and Regulation Z provisions to covered separate credit features accessible by a hybrid prepaid-credit card.

With respect to each major provision of the final rule, the Bureau considers the benefits, costs, and impacts to consumers and covered persons. In addition, the Bureau discusses certain alternative provisions that it considered, in addition to the major provisions ultimately adopted, and addresses comments received in response to the proposed rule's section 1022(b)(2)(A) treatment of these topics. Where comments discuss the benefits or costs of a provision of the proposed rule in the context of commenting on the merits of that provision, the Bureau has addressed those comments above in the relevant section-by-section analysis. In this respect, the Bureau's section 1022(b)(2)(A) discussion is not limited to the discussion in this part of the final rule.

In considering the relevant potential benefits, costs, and impacts, the Bureau

[718] The definition of prepaid account in § 1005.2(b)(3) includes government benefit accounts and payroll card accounts.

has consulted the available data discussed in this preamble and has applied its knowledge and expertise concerning consumer financial markets. Where 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 final rule. However, the Bureau notes that, in some instances, there are limited data available to inform the quantification of the potential benefits, costs, and impacts. For example, financial institutions that currently apply Regulation E's limited liability and 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, coupled with available quantitative information, provide insight into the potential benefits, costs, and impacts arising from the final rule. Where possible, the Bureau makes quantitative estimates based on these principles as well as available data. However, where data are limited, the Bureau generally provides a qualitative discussion of the final rule's benefits, costs, and impacts.

C. Baseline for Consideration of Benefits and Costs

The baseline for this discussion is the current market for prepaid accounts.[719] This baseline considers both the existing regulatory structure as well as the economic attributes of the relevant market.[720] Although the Bureau describes the current market in detail above, this section also describes certain features of the current market where particularly relevant. When informative, the Bureau also evaluates potential future impacts relative to how the market might have evolved absent the final rule. To ascertain the current state of the market, the Bureau performed industry outreach and conducted its Study of Prepaid Account Agreements in connection with the proposed rule. The Bureau also performed consumer testing to inform the proposed rule and conducted additional consumer testing in connection with the final rule.

The final rule both extends Regulation E to cover additional accounts and amends Regulation E to include new provisions for those accounts, such as the final rule's requirements relating to pre-acquisition disclosures. With respect to the provisions addressing consumer access to account information, limited liability, and error resolution protections, the Bureau generally extends existing provisions of Regulation E, as they apply to payroll card accounts, to all prepaid accounts. For some prepaid accounts, such as GPR cards that do not receive Federal payments, these protections are newly required. However, certain other prepaid accounts, such as payroll card accounts and GPR cards that receive Federal payments, are currently subject to Regulation E's requirements (as they apply to payroll card accounts) directly or indirectly.[721] Regulation E also contains provisions that currently apply to government benefit accounts, which the final rule amends to conform more closely to requirements for other types of prepaid accounts.[722]

Current industry practice is consistent with the final rule's requirements in some cases. In such cases, the benefits, costs, and impacts of the final rule on both financial institutions and consumers are more modest than those that would result if industry practice deviated from the final rule's requirements. As discussed above, the Bureau's Study of Prepaid Account Agreements, performed in connection with the proposed rule, suggested that many financial institutions subject to the final rule already implement many of the final rule's requirements pertaining to consumer access to account information, limited liability, and error resolution. In addition to existing Federal regulatory requirements, the need for issuing financial institutions to comply with payment card associations' network rules may explain why some financial institutions currently fully or partially implement the final rule's requirements with respect to limited liability and error resolution.[723]

The final rule also includes protections for consumers using prepaid cards to access covered separate credit features offered by prepaid account issuers, their affiliates, or their business partners (except as provided in new § 1026.61(a)(4)). The Bureau understands that few providers currently offer prepaid accounts with overdraft services.[724] However, one of the largest prepaid account program managers offers an overdraft service in connection with some of its prepaid account products (which include both GPR cards and payroll card accounts), so the number of prepaid accounts eligible for overdraft services is not negligible.[725]

The Bureau believes that those few prepaid account providers offering overdraft services do not presently comply with requirements set forth in the final rule's credit provisions. The Bureau understands that those prepaid account providers offering overdraft services condition consumer eligibility on receipt of a regularly occurring direct deposit and require consumers to opt-in to the service.[726] When funds are deposited into an overdraft-enabled prepaid account, the Bureau understands that these funds generally are applied automatically to any outstanding negative balance before the

[719] The Bureau has discretion in future rulemakings to choose the relevant provisions to discuss and the most appropriate baseline for that particular rulemaking.

[720] As discussed above, several Federal regulatory regimes apply to some or all types of prepaid accounts or to transactions involving these accounts, including: Requirements set forth in current Regulation E; requirements regarding receipt of Federal payments onto prepaid cards and interchange fees; and requirements to prevent financial crimes such as money laundering and terrorist financing. Prudential regulators also have issued guidance pertaining to the application of their rules to prepaid cards, program managers, and issuing financial institutions. The benefits, costs, and impacts that arise from the final rule are attenuated if certain provisions are already required under State law.

[721] As discussed above, the FMS Rule extends Regulation E's payroll card account protections to prepaid accounts that receive Federal payments.

[722] Current provisions governing consumer access to government benefit account information differ somewhat from those applicable to payroll card accounts. Specifically, the alternative to the periodic statement requirement, described in existing § 1005.15(c), does not require that a financial institution make available an electronic history of account transactions to the consumer.

[723] In certain circumstances, payment card associations' network rules provide some form of zero liability protections for prepaid cardholders. *See, e.g.,* Visa Inc., *Zero Liability, available at https://www.visa.com/chip//security/zero-liability.jsp* (last visited Oct. 1, 2016); MasterCard Inc., *Zero Liability Protection, available at http://www.mastercard.us/zero-liability.html* (last visited Oct. 1, 2016).

[724] As discussed in more detail below, the Bureau sometimes uses the generic term ''provider'' in this discussion to describe covered entities responsible for compliance with the final rule's provisions.

[725] NetSpend is a significant provider of prepaid accounts. *See* Total Sys. Serv., Inc., Annual Report (Form 10–K), at 2, *available at http://www.sec.gov/Archives/edgar/data/721683/000119312516476239/d240097d10k.htm* (for the year ended Dec. 31, 2015) (''Through our NetSpend business, we believe that we are the largest prepaid program manager in the United States based on gross dollar volume.''). A news article reported that 6 percent of NetSpend's customers regularly use overdraft services. Suzanne Kapner, *Prepaid Plastic is Creeping into Credit,* Wall St. J. (Sept. 5, 2012), *available at http://online.wsj.com/news/articles/SB10000872396390443686004577633 4* (2012 NetSpend WSJ Article). In addition, a larger percentage of accounts would potentially be eligible for their overdraft program. A recent financial filing suggested that NetSpend had 3.6 million active cards as of Sept. 30, 2015, and 49 percent of those active cards had direct deposit. Total Sys. Serv., Inc., Quarterly Report (Form 10–Q), at 27, *available at https://www.sec.gov/Archives/edgar/data/721683/000119312515367677/d10q.htm* (for the quarterly period ended Sept. 30, 2015).

[726] *See, e.g.,* 2012 FRB Kansas City Study at 9.

consumer may access them.[727] The Bureau understands that providers currently offering such services have adopted program rules designed to aid the population using these features, such as discouraging persistent use of the overdraft service by capping the number of fees that a consumer may incur in a specified period.[728] However, there is currently no Federal regulatory requirement that providers offer such protections for all prepaid account products.

The Bureau believes that additional prepaid account providers may be considering offering products that would be covered separate credit features accessible by a hybrid prepaid-credit card, suggesting the potential for increased consumer access to these products in the future.[729] The final rule provides clarity regarding the terms on which a prepaid account issuer, its affiliate, or its business partner may offer covered separate credit features accessible by a hybrid prepaid-credit card to consumers. The final rule's credit provisions help ensure that prepaid account issuers, their affiliates, and their business partners offer covered separate credit features accessible by a hybrid prepaid-credit card to prepaid account consumers in a transparent manner and that consumers using these features receive certain important protections.

D. Coverage of the Final Rule

The final rule applies to any prepaid product that meets the definition of prepaid account set forth in § 1005.2(b)(3). With respect to the Regulation E provisions, covered persons include financial institutions that issue prepaid accounts. Financial institutions may work with program managers or other industry participants in marketing, establishing, or maintaining prepaid accounts.[730] Given the variety of organizational forms used to offer prepaid programs, the Bureau does not allocate burdens among issuers, program managers, and other participants in this discussion of the benefits, costs, and impacts arising from the final rule. In addition to financial institutions, card issuers and creditors offering covered separate credit features accessible by a hybrid prepaid-credit card are also subject to the final rule's credit provisions. Depending on the facts and circumstances, these persons may or may not be the prepaid account issuer or program manager. For clarity, the Bureau sometimes uses the generic term ''provider'' in this discussion to describe covered entities responsible for compliance with the final rule's provisions and does not allocate burdens arising from these provisions among market participants.

E. Potential Benefits and Costs to Consumers and Covered Persons

In applying the consumer protections in Regulations E and Z to a broader class of accounts, the Bureau intends to reduce consumer and industry uncertainty regarding responsibilities and liabilities among market participants. With the possible exception of the final rule's credit provisions, which apply to covered separate credit features accessible by a hybrid prepaid-credit card, the Bureau does not believe that the final rule will meaningfully reduce consumer access to consumer financial products and services. This is because, with the exception of the credit provisions, most financial institutions are already partially complying with many of the final rule's requirements (due to preexisting regulatory requirements or payment card association network rules), and the additional requirements of the final rule will result in relatively modest ongoing burden for these institutions.

By adopting the final rule, the Bureau aims to lessen consumer risk associated with using those prepaid account products that currently do not offer the protections required by the final rule. In addition, the final rule lessens the potential risk incurred by consumers who would use prepaid account products in the future that, absent the final rule's requirements, would lack these protections. In particular, the Bureau is concerned that some prepaid account consumers may be unaware that certain prepaid account products currently on the market offer fewer protections than comparable products currently subject to Regulation E, and consumers may be unaware of the diversity of protections currently offered in connection with prepaid account products. In addition, because both prepaid cards and debit cards linked to checking accounts enable consumers to access their own funds and have similar functionalities and appearances, prepaid accountholders may believe that the accounts associated with these cards offer similar consumer protections. By bringing prepaid accounts within the ambit of Regulation E, the final rule ensures that prepaid accountholders receive consistent protections, regardless of the prepaid account held, and have the opportunity to enjoy the protections afforded to consumers of similar products.

The final rule's disclosure requirements ensure that consumers generally have access to comparable, transparent, key, and comprehensive information prior to acquiring a prepaid account. Motivated by private incentives, financial institutions may choose to disclose a socially suboptimal amount of information to consumers.[731] For example, firms may engage in strategies to frustrate consumer efforts to compare products.[732] Consumers generally incur costs, in terms of time, money, or both, to determine the price and quality of a particular product before purchasing it. Consumers searching for a prepaid account have less incentive to compare various products when performing these comparisons is costly. When consumers are unwilling to incur these search costs, financial institutions may exercise market power. As a result, a sufficiently inexpensive reduction in these costs can benefit consumers and enhance

[727] 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, e.g.,* CA AB 1280; CA AB 2252.

[728] *See, e.g.,* 2012 NetSpend WSJ Article; *see also* NetSpend Corp., *Amended Terms for Your Cardholder Agreement, available at http://www.netspend.com/account/overdraftTerms.m* (last visited Oct. 1, 2016) (overdraft terms and conditions).

[729] The Bureau understands from industry comments regarding the proposed rule that other financial institutions offering prepaid accounts would consider offering overdraft services in connection with their prepaid account products if the Bureau were to adopt a Regulation E opt-in regime, described in greater detail above.

[730] Some financial institutions acting as prepaid account issuers 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 leave program management to others. The scope of such roles may vary. However, 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. 2012 FRB Philadelphia Study at 10.

[731] The socially optimal amount of information about a prepaid account depends on the cost to financial institutions (or third parties) of acquiring and providing product information and the benefit to consumers from improved understanding and choice. In general, at the social optimum, the benefit to consumers from additional or more transparent information would exactly equal the additional cost to financial institutions (or third parties) of providing that information.

[732] *See, e.g.,* Glenn Ellison & Sara Fisher Ellison, *Search, Obfuscation, and Price Elasticities on the Internet,* 77 Econometrica, 427 (2009).

efficiency.[733] By standardizing the information that consumers receive, the final rule's short form disclosure requirements reduce the search costs associated with finding, understanding, and comparing critical information. Further, because all consumers of the product potentially benefit when prices decrease due to search by some consumers, the benefits of lower search costs extend beyond those consumers who actually engage in comparison shopping before making a purchasing decision.

In addition to reducing search costs by making information more comparable and transparent, the final rule's disclosure requirements ensure that consumers have access to comprehensive information regarding prepaid accounts. Financial institutions have strong incentives to make consumers aware of generally attractive product features, such as functionality offered without an additional fee. However, financial institutions have less incentive to identify and make transparent unattractive product features, such as high fees that may be associated with certain types of activities. In some cases, prepaid accountholders may utilize high-cost features frequently, and these consumers may have selected a different product were the fee information transparent when they acquired the account.[734]

One commenter suggested that the Bureau analyze more recent data describing prepaid card consumer spending and behavior but did not point to particular spending or behavior studies that it deemed more informative than those discussed in the proposal. Commenters noted that various third-party sources aggregate information regarding prepaid cards and offer consumers evaluations of prepaid card fees and terms, including tailored recommendations in some cases. However, not all consumers rely on these evaluations in their search. Consumers may not access these evaluations due to lack of awareness, difficulty in accessing the evaluations, or skepticism regarding their objectivity. The Bureau believes that the final rule's content and formatting requirements increase transparency by ensuring that financial institutions disclose certain terms to consumers before they acquire prepaid accounts.

In addition to depending on financial institutions to disclose information about account features to aid purchasing decisions, consumers rely on financial institutions to provide information regarding their account status, as well as other services such as error resolution, on an ongoing basis. Although the account terms and conditions may articulate the financial institution's commitments with respect to these features, many consumers may not review these documents or be able to anticipate their needs accurately before acquiring an account. Moreover, a financial institution's strength in performing these functions may be difficult to ascertain or impossible to observe in advance. While a financial institution's reputation would suffer if it consistently provided poor service, such long-term consequences may not protect all consumers sufficiently from the financial institution's incentives for short-term gain.[735] The switching costs incurred by a consumer in changing prepaid accounts may serve as an additional friction that decreases a financial institution's incentive to provide high quality services on an ongoing basis.

Although most prepaid account programs reviewed in the Bureau's Study of Prepaid Account Agreements offered many of the limited liability and error resolution protections set forth in the final rule, the Bureau is concerned that the total number of consumers at risk of an unexpected loss could increase in the future as more consumers adopt and use prepaid accounts. Prepaid accounts, which leverage the same large payment network rails as credit cards, are widely accepted by merchants and increasingly used by consumers. A survey conducted by the Board in 2013 (and published in 2014) found that 15 percent of respondents reported using a general purpose prepaid card in the past 12 months.[736] Among respondents to that survey 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 GPR or payroll card reported that they or someone else added money to their card in the past month.[737] 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.[738] The 2013 FDIC Survey 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; moreover, this survey found that prepaid card use was more

[733] *See, e.g.,* Dale O. Stahl II, *Oligopolistic Pricing with Sequential Consumer Search,* 79 a.m. Econ. Rev. 700 (1989). A commenter from a university regulatory studies center stated that this paper provides a poor model of the market for prepaid accounts because it assumes that consumers search for the best price for a homogeneous good while prepaid products vary in terms of both price and product features. The commenter recommended instead a paper by Bakos that similarly concludes that ''reducing the cost of price and product information typically will improve market efficiency but will reduce seller profits.'' J. Yannis Bakos, *Reducing Buyer Search Costs: Implications for Electronic Marketplaces,* 43 Mgmt. Sci. 1676, 1677 (1997). *See also* Simon P. Anderson & Regis Renault, *Pricing, Product Diversity, and Search Costs: A Bertrand-Chamberlin-Diamond Model,* 30 Rand J. Econ. 719 (1999) (showing that product diversity does not change the conclusion in Stahl that lower search costs lead to lower equilibrium prices). These authors note that some (but not all) features of the market for credit cards can be explained by their framework. *Id.* at 731. This commenter also stated that the Bureau should consider ways to protect consumers who do not search. The Bureau notes that the final rule's general requirements with respect to limited liability and error resolution protect consumers regardless of whether they search.

[734] Research covering prepaid programs that represented 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, the authors identify marketing and communication to promote positive consumer use as an area for improvement. 2014 CFSI Scorecard at 11.

[735] The relationship between reputation and quality is highly complex, even under competition. *See, e.g.,* 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 Founds. and Trends Microeconomics 273 (2008).

[736] 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 FRB Consumers and Mobile Financial Services Survey). General purpose prepaid cards are one type of product subsumed within the final 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 requirements. The subsequent wave of the survey found that 19.8 percent of respondents reported using a prepaid debit card in the past 12 months, suggesting that product use is proliferating. 2015 FRB Consumers and Mobile Financial Services Survey at 53 tbl.C.3.

[737] 2014 FRB Consumers and Mobile Financial Services Survey at 48 tbls.C.9 & C.10. This implies that roughly 3 percent of respondents had a general purpose prepaid card or payroll card that they or someone else had (re)loaded in the past month. The subsequent survey wave did not include these questions. 2015 FRB Consumers and Mobile Financial Services Survey. The most recent wave of the survey found that 16.2 percent of respondents used a GPR card in the past 12 months, but the survey did not inquire regarding how frequently respondents reloaded the cards. 2016 FRB Consumers and Mobile Financial Services Survey at 61 tbl.C.3.

[738] 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 are not included in the final rule's definition of prepaid account. *Id.* at 7.

common among households that were unbanked or underbanked.[739] Another survey found that 5 percent of adults had used prepaid cards at least once a month.[740]

Although consumers have different motivations for acquiring prepaid accounts, some financial institutions design and market these accounts to consumers as an alternative to traditional checking accounts. According to one survey, of the 5 percent of adults who reported using a prepaid card at least once a month, 41 percent did not simultaneously maintain a checking account.[741] This implies that roughly 2 percent of the adult population uses a prepaid card monthly and does not have a checking account.[742] According to a survey conducted by the Board in 2012 (and published in 2013), 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.[743] Prepaid accounts offer individuals who do not have access to traditional debit or credit card accounts a means to perform EFTs. These accounts also enable consumers, who may not otherwise have access to another electronic payment method, to make purchases from online merchants and others who do not accept cash. Additionally, prepaid accounts provide individuals lacking 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 benefits via direct deposit. For unbanked consumers, loading funds into a prepaid account may serve as an alternative to relying on a check-cashing provider.

Although consumers may hold funds in 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's requirements.[744] Consumers may hold their prepaid accounts for extended periods and load significant portions of their available funds into such accounts. Consumers who store funds in prepaid accounts without liability limitations and error resolution protections (including provisional credit) may be at risk of an unexpected loss of or a delay in access to funds in the event of an error or unauthorized transfer. The final rule reduces the risk borne by these consumers by requiring that financial institutions limit liability for unauthorized transfers and offer error resolution protections for all prepaid accounts, including provisional credit on accounts that have completed the customer identification and verification processes.

In addition, the final rule helps consumers assess the risks and costs associated with using prepaid accounts by requiring more comprehensive disclosure of account transaction history than currently required. These new requirements may help consumers to understand the financial costs associated with using prepaid accounts, to recognize errors, and to exercise error resolution rights. As discussed below, many financial institutions currently implement several of the final rule's provisions relating to communication of account information to accountholders, including providing consumers with electronic access to their transaction history.

The final rule also modifies Regulations E and Z to impose new requirements in relation to covered separate credit features accessible by a hybrid prepaid-credit card. As described in greater detail above, in the final rule, the Bureau generally intends to cover under Regulation Z overdraft credit features offered in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliate, or its business partner (except as described in new § 1026.61(a)(4)). New § 1026.61(b) generally requires that such overdraft credit features be structured as separate sub-accounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61 refers to these overdraft credit features as ''covered separate credit features.'' In addition, under the final rule, a prepaid card that can access a covered separate credit feature is a ''credit card'' under Regulation Z with respect to that credit feature. The final rule defines such a prepaid card that is a credit card as a ''hybrid prepaid-credit card'' in new § 1026.61.

The Bureau anticipates that most covered separate credit features will meet the definition of ''open-end credit.'' Persons offering covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) credit generally are required to comply with the disclosure provisions and credit card provisions in subparts B and G of Regulation Z, including certain fee and payment restrictions. Additionally, the final rule provides that card issuers must adhere to timing requirements regarding solicitation and application that generally prevent card issuers from doing any of the following within 30 days of prepaid account registration: (1) Opening a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) making a solicitation or providing an application for such a feature; or (3) allowing an existing credit feature to become such a covered separate credit feature accessible by a hybrid prepaid-credit card. Moreover, for those prepaid account programs where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card, the final rule requires that a financial institution generally provide to any prepaid account without an associated covered separate credit feature accessible by a hybrid prepaid-credit card the same account terms, conditions, and features that it provides on prepaid accounts in the same prepaid account program that have such a credit feature.[745]

[739] 2013 FDIC Survey at 29–30.

[740] 2014 Pew Survey at 1. Survey respondents were told not to include gift cards, rebate cards, credit cards, or phone cards. *Id.* at 24.

[741] 2014 Pew Survey at 1, 7.

[742] *See id.*

[743] 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.* The following information was used to derive this statistic: ''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 adult 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 FRB Consumers and Mobile Financial Services Survey, which reported findings from a survey conducted in 2013, did not include information that enabled the Bureau to calculate a revised statistic.

[744] 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 prepaid cards that receive Federal payments. Consistent with the Bureau's findings in its Study of Prepaid Account Agreements, one industry commenter stated that the FMS Rule has essentially forced any product accepting ACH credits to implement the protections that apply to payroll card accounts under Regulation E.

[745] The final rule permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card relative to the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. However, a financial institution cannot charge a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card relative to the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature.

Although few providers currently offer overdraft services in connection with prepaid accounts, the Bureau believes that such offerings could become more prevalent in the future. Therefore, the Bureau believes that it is important to ensure that consumers using prepaid cards that access covered separate credit features receive appropriate protections. By adopting the requirements at this time, the Bureau hopes to mitigate harm to consumers arising from the absence of these protections and to lessen disruption that industry could experience if regulatory uncertainty were resolved after such products had become widespread.

To assess the potential impacts of the final rule on consumers and covered persons, the Bureau separately discusses the benefits and costs associated with each major provision. For clarity, costs arising from compliance burdens that are imposed on financial institutions, card issuers, and creditors are discussed under the subheading ''Benefits and Costs to Covered Persons'' for each major provision. The final rule's provisions may impose one-time implementation costs and may affect ongoing operational costs, both of which may be fixed or variable.[746] Economic theory predicts that providers will absorb fixed cost increases. However, such increases may restrict consumer choice if they cause current providers to exit the market or deter potential providers from entering the market. In some situations, a decrease in the number of market participants could facilitate the exercise of market power by remaining providers. This could result in higher prices for consumers, decreased product quality, or some combination thereof.

Providers' ability to recoup variable cost increases by raising prices depends on both the relative elasticities of supply and demand for the product and the extent of market competition.[747] Both providers and consumers ultimately will bear these burdens, and the party that is less responsive to a price change will bear a larger share.

1. Pre-Acquisition Disclosures and Initial Disclosures

The final rule requires new pre-acquisition disclosures for prepaid accounts, extends existing Regulation E disclosure requirements to prepaid accounts, and requires new disclosures to be made on prepaid account access devices. Under the final rule, newly printed disclosures will need to be compliant beginning October 1, 2017. The final rule also modifies the initial disclosures of fees required by Regulation E. The final rule extends § 1005.7 to prepaid accounts; and, in § 1005.18(f)(1), adds the requirement that the financial institution must disclose all fees imposed by the financial institution in connection with a prepaid account, not just fees related to EFTs. In addition, section § 1005.18(f)(3) requires that financial institutions disclose on prepaid account access devices the financial institution's name, and both the URL of a Web site and a telephone number that a consumer can use to contact the financial institution about the prepaid account.

Section 1005.18(b)(1) generally requires that a financial institution provide a short form disclosure and a long form disclosure before a consumer acquires a prepaid account.[748] Sections 1005.18(b)(2) through (5) establish the content of these disclosures. The long form disclosure includes all of the information required to be disclosed on the short form, with the exception of information related to fees or the availability of the long form. In addition, among other information, the long form sets forth *all* fees imposed in connection with a prepaid account and their qualifying conditions; contact information of the Consumer Financial Protection Bureau; and contact information for the financial institution.

The short form disclosure includes a ''static'' portion, an ''additional fee types'' portion, and a portion for additional information. The static portion includes the seven fees or fee types that the Bureau believes to be the most important to consumers when shopping for a prepaid account. The ''additional fee types'' portion states the total number of fees that the prepaid account charges (not including finance charges, purchase price, or activation fees)[749] but which are not disclosed in the static portion of the form, followed by a second statement explaining that what follows are examples of some of those additional fee types, followed by the two of these fee types that generated the most revenue for the prepaid product during the prior 24-month period. The final rule also introduces a 5 percent de minimis revenue threshold, whereby if a fee type resulted in less than 5 percent of total fee revenue from consumers for that 24-month period then that fee type would not be required to be disclosed. The short form includes additional disclosures regarding FDIC deposit or NCUA share insurance and other account protections; the Web site of the Consumer Financial Protection Bureau; a statement directing the consumer to the location of the long form disclosure; and a statement regarding whether the product offers overdraft credit features. In addition to the information required on the short form disclosure, financial institutions must disclose outside of, but in close proximity to, the short form disclosure, the name of the financial institution; the name of the prepaid program; the purchase price for the prepaid account, if any; and the fee for activating the prepaid account, if any.

The final rule restricts the information that may be disclosed on, or with, the short form and long form disclosures. Section 1005.18(b)(7) requires that when a short form or long form disclosure is presented in writing or electronically, it must be segregated from other information and contain only the information required or permitted by the final rule. Section 1005.18(b)(3) requires that if the amount of a fee associated with a fee type listed in the short form disclosure could vary, a financial institution must disclose the highest fee associated with the fee type, along with a symbol, such as an asterisk, linked to a statement that explains the fee could be lower depending on how and where the prepaid account is used. With the exception of a periodic fee, a financial institution must use the same symbol and explanatory statement for all fees that could be lower. In addition, § 1005.18(b)(3) establishes, with the exception of cash reload fees, that short form disclosures must not include any third-party fees; and it allows financial institutions to disclose any of the two-tiered disclosures required under § 1005.18(b)(2) as a single fee disclosure, if the amount is the same for both fees.

The final rule establishes certain aspects of the timing, form, and formatting of the short form and long form disclosures. Section 1005.18(b)(6) requires financial institutions provide certain portions of these disclosures in

[746] Fixed costs are those costs that do not depend on the number of prepaid accounts supplied by the financial institution or the number of credit card accounts supplied by the card issuer or creditor.

[747] The relative elasticities of supply and demand for a product measure 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. The relative elasticities of supply and demand can vary across covered products. The availability of information, which affects the perceived availability of substitute products, as well as the presence of substitute products may influence these relative elasticities.

[748] For concision, in this section, the disclosure requirements of § 1005.18(b)(5) are considered as part of the short form disclosure requirements.

[749] For concision, in this section, the number of additional fee types disclosure is considered without further discussion of the fact that finance charges, purchase price, and activation fees are excluded from its determination.

a tabular format, excepting disclosures that are provided orally. In addition, § 1005.18(b)(7) provides specific formatting requirements on grouping, prominence, and size. It requires that all information must be presented in a single, easy-to-read typeface, in a single color against a contrasting background; specifies which information must be emphasized with bold typeface; and specifies minimum and relative type sizes. It establishes how fees and other information on the short form should be grouped, including a ''top-line'' component which presents the first four fee types at the top of the form in a relatively large, bold font. On the long form disclosure, it requires that fee information must generally be grouped together by the categories of function.

The final rule also sets forth requirements for how and when the short form and long form disclosures must be provided to consumers. Section 1005.18(b)(1) requires financial institutions to provide consumers with the short form disclosure prior to acquisition of the prepaid account. It similarly requires that the long form disclosure be provided prior to acquisition of a prepaid account; however, it also provides exceptions if the account is acquired in a retail location or orally by telephone, as discussed below. Section 1005.18(b)(6) requires that the disclosures must be in writing, sets forth special rules that apply if they are provided in electronic form or orally, and provides that these disclosures must be in a retainable form (excepting disclosures that are provided orally).

The final rule creates exceptions to the pre-acquisition disclosure regime if the prepaid account is acquired in a retail location or orally by telephone. In a retail location, financial institutions may provide the long form disclosure after the consumer acquires a prepaid account as long as the prepaid account access device is contained inside the product's packaging material, the short form disclosure is visible to consumers, and the short form includes information about how to access the long form disclosure by telephone and via a Web site, among other requirements.

Before a consumer acquires a prepaid account orally by telephone, a financial institution must orally disclose the information required in the short form disclosure. However, the final rule allows a financial institution to provide the long form disclosure after the consumer acquires the prepaid account, provided that certain conditions are met before the consumer acquires the prepaid account, including that the financial institution informs the consumer orally that the information required to be disclosed on the long form disclosure is available both by telephone and on a Web site.

Pursuant to § 1005.18(b)(9), financial institutions must provide the short form and long form disclosures in a foreign language, if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in the following circumstances: (1) The financial institution principally uses a foreign language on prepaid account packaging material; (2) the financial institution principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically; or (3) the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. The financial institution must also provide the long form disclosure in English upon the consumer's request and on its Web site wherever it provides the long form disclosure in a foreign language.

A short form disclosure for a payroll card account or government benefit account must also contain a statement that consumers do not have to accept such an account and which directs the consumer to ask about other ways to receive wages, salary, or benefits; or a statement that the consumer has several options to receive wages, salary, or benefits, followed by a list of options available to the consumer, and which directs the consumer to choose one.

The final rule sets forth disclosure requirements when a financial institution offers multiple service plans within a particular prepaid account program. The financial institution may provide the standard short form disclosure (as described above) for the service plan in which the consumer is enrolled by default upon acquisition. Alternatively, the financial institution may simultaneously disclose the required information for all of its service plans in a short from substantially similar to Model Form A–10(e). The long form disclosure for a prepaid account program with multiple service plans must present the required information for all service plans in the form of a table.

Finally, § 1005.18(h)(1) provides that, except in certain circumstances, the requirements of subpart A of Regulation E, as modified by final § 1005.18, apply to prepaid accounts, including government benefit accounts subject to § 1005.15, beginning October 1, 2017. If a financial institution has changed a prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, the financial institution must provide certain disclosures to the consumer. Section 1005.18(h)(2)(iii) requires that financial institutions notify consumers with accounts acquired before the effective date of any change to the prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, at least 21 days in advance of the change becoming effective.[750] If a consumer acquires a prepaid account on or after the effective date, § 1005.18(h)(2)(ii)(A) requires that financial institutions notify that consumer of any change to the prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, within 30 days of acquiring the consumer's contact information. In addition, for accounts acquired after the effective date, § 1005.18(h)(2)(ii)(B) requires that financial institutions mail or deliver to the con initial disclosures pursuant to § 1005.7 and § 1005.18(f)(1) that have been updated as a result of § 1005.18(h)(1) taking effect, within 30 days of obtaining the consumer's contact information. Section 1005.18(h)(2)(iv) specifies the methods financial institutions may use to notify consumers of these changes and send updated initial disclosures.

a. Benefits and Costs to Consumers

The benefits and costs to consumers arising from the 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 disclosure requirements; (iii) a discussion of consumer engagement with disclosure; and (iv) a discussion of potential costs to consumers of the disclosure requirements.

i. Benefits of Information in General

According to standard models of consumer choice, when consumers face

[750] If a financial institution obtains a consumer's contact information fewer than 30 days in advance of that change becoming effective or after it has become effective, the financial institution is permitted to provide notice of the change in accordance with the timing requirements set forth in § 1005.18(h)(2)(ii)(A).

a choice among products in a given market, they consider the options available to them as well as the information they have about each of those options. In order for a consumer to make the best choice for her situation, her information must be accurate and descriptive of all available options.[751] In reality, however, consumers may not be perfectly 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 preferences.[752] 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 product 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

The Bureau believes that disclosures required by the final rule provide consumers with the additional information necessary to make informed choices regarding the prepaid account products available to them. The short form discloses key fees, key fee types, and other important information. So that the fees may be quickly located and compared, the fees and fee types that the Bureau believes are most important to consumers in shopping for prepaid accounts are listed at the top of the short form disclosure.[753] Consumers seeking information not found on the short form disclosure can use the long form disclosure, which also is required to be made available to consumers before consumers acquire a prepaid account.[754] As discussed in detail above, the long form disclosure lists all fees for a particular prepaid account program and the conditions, if any, under which they may be imposed, waived, or reduced. These disclosures will help consumers become more informed about the details of each prepaid account and could therefore improve consumer choice among available products.

The Bureau designed the short form disclosure in part to help consumers who are shopping for prepaid accounts to find the most important information. The Bureau limited the information that is displayed in order to make the information that is presented more salient and easier to locate.[755] As noted above, the fees that participants in the Bureau's testing identified as being most important to them are listed at the top of the short form disclosure, which the Bureau believes is a likely point for consumers' first engagement.[756] This effect is reinforced by the display of top-line information, which is presented in a relatively large, bold font printed on a background that provides clear contrast. Other disclosed fees and additional information are presented in clear, concise language and printed on a background that provides clear contrast for ease of reading.

One potential outcome of the Bureau's emphasis on a limited amount of information on the short form disclosure 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 disclosed fees and information, which could result in a benefit for consumers, for example, in the form of a reduction in disclosed fees. The requirement that financial institutions disclose only the highest possible fee for each required fee disclosure on the short form could encourage financial institutions with varying fees to simplify their fee structure. Such a reduction in complexity could improve consumers' comprehension of the products they are considering prior to acquisition.

Another benefit of the final rule will be to standardize prepaid account product disclosures. Currently, while providers generally disclose certain fees and information to consumers pre-acquisition, there is significant variation in the content and formatting of the disclosures offered to consumers before they acquire a prepaid account.[757] 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 will 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 will standardize the summary disclosure of key fees and other important information. Similarly,

[751] 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 achieved without optimizing; through random selection among known options, for example.

[752] 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.

[753] The Bureau's beliefs about the fees most important to consumers were based on the results of consumer testing. *See* ICF Report II. In addition, examining payroll account usage data, Wilshusen el al. find that these same fees also constitute a large majority of the fees charged to consumers, both by incidence and total value. 2012 FRB Philadelphia Study at 59.

[754] In addition, § 1005.18(f)(1) requires that a prepaid account's account agreement include all of the information required to be provided in the long form disclosure.

[755] 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).

[756] Andrew Caplin et al., *Search and Satisficing,* 101 a.m. Econ. Rev. 2899 (2011).

[757] This variation is pronounced in both retail and non-retail channels. For example, Pew 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/and-analysis/reports/2012/09/06/loaded-with-uncertainty*; *see also* 2014 Pew Study. Relatedly, CFSI and Pew cited the lack of current standards, among other things, as motivation for developing their own model forms. *See* Ctr. for Fin. Serv. Innovation, *Thinking Inside the Box: Improving Consumer Outcomes Through Better Fee Disclosure for Prepaid Cards* (Mar. 2012), *available at http://policylinkcontent.s3.amazonaws.com/Thinking Inside_CFSI_0.pdf*; *see also* The Pew Charitable Trusts, *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 long form disclosure will standardize the grouping of fees and make standard the disclosure of fees' qualifying conditions, making fees easier for consumers to locate and compare across products.

Consumers will also benefit from disclosed fees, terms, and conditions that are accurate pre-acquisition. Under the final rule, prepaid accounts are being brought within the ambit of Regulation E, which, among other things, requires that financial institutions provide consumers with written notice at least 21 days before implementing, generally, a change that would result in increased fees or liability for the consumer, or fewer types of EFTs or stricter limitations on EFTs. Therefore consumers can have confidence that the fees and features of the products that they purchase are accurately disclosed, and that certain changes to those products are properly disclosed to the consumer with advance notice.

As discussed in detail above, under the final rule, financial institutions may offer consumers multiple service plans within a single prepaid account program. This provides consumers with the benefit of additional options from which to choose, which may therefore improve the quality of consumers' purchasing decisions or product use. However, multiple service plans may also present challenges to consumers. In particular, because financial institutions that disclose multiple plans on the short form will utilize a unique disclosure format, these disclosures may be relatively difficult to compare to other prepaid products. This could decrease the overall quality of consumers' purchasing decision. In addition, the multiple service plan option will result in a larger amount of information for consumers to process, somewhat lessening the above-discussed benefits of limited information on the short form disclosure.

Also as discussed above, in certain situations, if a financial institution principally uses a foreign language on retail packaging, to market a prepaid account, or to communicate with a consumer during account acquisition, then 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 if a consumer relies on a foreign language in the acquisition of a prepaid account, then it is likely that that foreign language is the consumer's language of greatest proficiency. Furthermore, the Bureau believes that the ability to obtain the long form disclosure information in English will be beneficial to consumers in various situations, such as when a family member who only reads English is assisting a non-English speaking consumer to manage his prepaid account.

The proposed rule would have required that if a financial institution primarily used a foreign language in-person with a consumer who was acquiring a prepaid account, then the financial institution would have to provide pre-acquisition disclosures in that foreign language. Two trade associations and one law firm commenting on behalf of a coalition of credit unions commented that the requirement that financial institutions provide disclosures in the foreign language that they use to converse to consumers in-person, as specified in the proposed rule, would be overly burdensome, create a potential compliance trap, and could result in a reduction in access to foreign language speakers. In response to these comments, the Bureau has removed this requirement for in-person interactions in this final rule. The Bureau has maintained the requirement that financial institutions provide disclosures in the foreign language if a financial institution principally uses a foreign language to market a prepaid account and provides a means there for a consumer to acquire the account by telephone or through a Web site; or provides a means for a consumer to acquire a prepaid account by telephone or through a Web site principally in a foreign language; or primarily uses a foreign language on packaging material. The Bureau believes that this approach ensures that the majority of consumers who acquire a prepaid account using a foreign language have the ability to receive disclosures in that language while not limiting the ability of financial institutions to interact with their customers in the language that the customer is most comfortable.

The final rule also requires disclosure on the short form of whether the prepaid account might offer the consumer an overdraft credit feature at some time in the future.[758] If an overdraft credit feature might be offered, then the financial institution must also disclose the time period after which it might be offered and that fees would apply. Because both the existence of, and the absence of, possible overdraft credit features are required to be similarly disclosed, consumers will be able to easily compare prepaid account products along this dimension. The Bureau's pre-proposal consumer testing, in addition to external studies,[759] suggests that many consumers choose prepaid products specifically to avoid overdraft services. Requiring financial institutions to disclose when a prepaid account program does or does not offer overdraft credit features will therefore help those consumers make informed purchasing decisions if they want to avoid such features. Conversely, consumers who are seeking a prepaid account with the possibility of accessing an overdraft credit feature will be able to more easily identify products that offer such a feature.

Additionally, as discussed above, the final rule requires the short form disclosure for payroll card accounts and government benefit accounts to contain either a statement that the consumer does not have to accept the account and which directs the consumer to ask about other ways to receive wages, salary, or benefits; or a statement that the consumer has several options to receive wages, salary, or benefits, followed by a list of options available to the consumer, and which directs the consumer to choose one of the available options. The Bureau believes that these disclosures may prompt consumers to ask questions about alternative ways of receiving their wages or benefits and thereby facilitate consumer choice.

Section 1005.18(b)(2)(viii) requires disclosure of the total number of fee types charged by the financial institution other than those disclosed on the short form disclosure. In the Bureau's consumer testing, this number became a focal point for participants. If this number becomes a focal point for consumers, then financial institutions may choose to compete on this metric, which could potentially reduce the number of fee types imposed in connection with prepaid accounts. As a result, consumers may benefit from fewer fees and simpler products, generally.

Section 1005.18(b)(2)(ix) requires disclosure of up to two fee types, other than those disclosed on the static portion of the short form disclosure, that generated the highest total revenue from consumers of the prepaid account program over the prior 24-month period.[760] The disclosure of these fees will serve at least two purposes. First,

[758] *See* § 1005.18(b)(2)(x).

[759] *See, e.g.,* 2014 Pew Survey at 13.

[760] If a fee type resulted in less than 5 percent of total revenue from consumers for that 24-month period, then that fee type would not be required to be disclosed.

it will help to alert consumers to account features for which they may end up incurring a significant cost. Second, it will help ensure that the disclosure regime set forth in the final rule adapts to new and varied products as services that each firm offers or introduces that generate sufficient revenue will appear in the additional fee types portion of the disclosure.

As discussed in greater detail in the section-by-section analyses of § 1005.18(b)(2) and (b)(2)(ix) above, the Bureau proposed to require financial institutions to disclose up to three incidence-based fees on the short form. Incidence-based fees would have been fees that were incurred most frequently in the prior 12-month period by consumers of a particular prepaid account product. A number of industry commenters, including trade associations, issuing banks, program managers, payment network providers, and a law firm commenting on behalf of a coalition of prepaid issuers, suggested that the incidence-based fee disclosures should be eliminated because they would confuse consumers and restrict the ability of consumers to comparison shop.[761]

While the Bureau's pre-proposal and post-proposal consumer testing indicates that many individuals will understand the additional fee types portion of the short form disclosure, it is possible that some consumers will incorrectly interpret it. In Bureau's pre-proposal and post-proposal consumer testing, participants did not comprehend statements that were intended to explain what are now additional fee types in the final rule.[762] In addition, some participants incorrectly concluded that the absence of a fee type implied the absence of the service related to that fee type. In order make the connection for consumers that the additional fee types disclosed pursuant to final § 1005.18(b)(2)(ix) are a subset of the number of additional fee types disclosed pursuant to final § 1005.18(b)(2)(viii)(A), and that absence of any feature on the short form does not necessarily mean the prepaid account program does not offer that feature, the Bureau has added a new explanatory statement to precede the additional fee types that introduces the concept of additional fee types in a simple, succinct manner.

iii. Consumer Engagement With Disclosure

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 of that information.[763] This result highlights the importance of an initial step: ''engagement,''[764] the immediate analysis of any new information encountered by a consumer in which the consumer assesses the costs and benefits of consumption of that information.[765] If this calculation yields a high enough net expected benefit, then the consumer engages, and begins to further consume the information. 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.[766]

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' emotional response, the Bureau designed the short form disclosure to be visually appealing. In addition, to reduce the perceived difficulty of learning about a prepaid product, the short form disclosure assigns terms a clear hierarchy through positioning, type-size, contrasting background, and bold-faced type; includes concise descriptions of fees and conditions; and limits the use of symbols and fine-print. Finally, as the perceived cost to a consumer of using a disclosure increases with the amount of information provided, the short form disclosure presents consumers with a reduced, manageable set of information about the product.[767]

A number of industry commenters, including a trade association and an issuing credit union, stated that consumers generally do not read disclosures or comparison shop. One issuing credit union asserted that only one in 30,000 consumers actually read the provided disclosures. The Bureau disagrees with the claim that a minute number of consumers read disclosures for prepaid products. A recent survey of prepaid consumers reported that approximately one in three prepaid consumers comparison shopped before purchase, and, of those that did not, nearly one third stated that they would be more likely to comparison shop if disclosures were standardized across prepaid products.[768] The disclosure regime designed by the Bureau is intended, in part, to engage consumers who may not otherwise read a disclosure of fees or comparison shop. Therefore the segment of consumers who are not currently reading prepaid disclosures is an opportunity for the Bureau to improve consumer engagement and promote a more active, competitive market in general. Further, if comparison shoppers drive the market

[761] Due in part to public comments to the proposed rule, the Bureau shifted from additional fee types based on fee incidence in the proposed rule to additional fee types based on fee revenue in the final rule. As a result, there is an inconsistency between the public comments, which address fee incidence, and the disclosure requirements of the final rule, which address fee revenue. Nonetheless, the two approaches are similar, and therefore, unless stated otherwise, the Bureau addresses comments related to incidence-based fees as if those comments were about the final rule's revenue-based fees.

[762] Pre-proposal testing of a statement intended to inform consumers that the fees listed were those that generated significant revenue for the financial institution resulted in minimal participant comprehension or notice. *See* ICF Report I at 35. (Certain prototype short form disclosures tested included the statement: ''The fees below generate significant revenue for this company.''). Post-proposal testing of a similar disclosure that, in addition to including an explanation of the criteria for disclosing such fees (*i.e.,* that the two fees listed were the most commonly charged), also directed consumers where to find detail about all fees, similarly did not increase participant comprehension. *See* ICF Report II at 22–23. (Certain prototype short form disclosures tested included the statement: ''We charge [x] additional fees. Details on fees inside the package, at 800–234–5678 or at *bit.ly/XYZprepaids.* These are our most common:''.)

[763] 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), *available at http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf*; Eric Johnson et al., *Can Consumers Make Affordable Care Affordable? The Value of Choice Architecture,* PLOS One (Dec. 2013), at 1, 2.

[764] *Id.* 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 information consumption.

[765] 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).

[766] *See, e.g.,* Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law,* 66 Stan. L. Rev. 545 (2014).

[767] 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).

[768] 2015 Pew Survey at 8.

towards products with consumer-friendly features and costs, non-shoppers could benefit from a better selection of available products as well.

One academic institution questioned whether consumers would be able to make use of the disclosures because financial literacy is low in general and particularly low for the consumers whom the Bureau is attempting to assist. However, the fact that the majority of consumers who use prepaid products do so to avoid fees such as overdraft and check-cashing fees [769] suggests that many prepaid consumers have a strong understanding of the potential benefits of prepaid accounts and the features that are important to them. Even if it were true that prepaid users have low financial literacy on average the Bureau does not believe that this would rationalize abandoning standardized disclosures. For the reasons stated above, the Bureau believes it is to consumers' benefit that they be informed about the products they purchase. A well-designed disclosure regime can engage consumers, help to educate consumers, and simplify the process of product comparison. Therefore the Bureau believes that the short form and long form disclosures will act as a corrective to confusion caused by a lack of financial literacy, if it exists.

iv. Costs to Consumers

The Bureau's effort to simplify pre-acquisition disclosures may generate costs as well as benefits for consumers. As discussed above, the Bureau's emphasis of a limited number of fees in the short form disclosure could result in a reduction in the amounts of those particular fees through competitive pressure. However, to the extent they exist, fees that would be relatively *de*-emphasized by the short form disclosure could, as a result, experience an easing of competitive pressure and thereby increases in the amounts charged. Such costs should be mitigated to some extent by the additional fee types portion of the short form disclosure. Likewise, the number of fees that could be added to a product due to a lack of emphasis by the disclosure regime should be mitigated to some extent by the requirement for financial institutions to disclose the number of additional fees not disclosed explicitly on the short form disclosure.

Section 1005.18(b)(3)(i), which generally requires a financial institution to disclose the highest amount for any fee or fee type listed on the short form disclosure, may also generate costs for consumers. 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 provided with the long form disclosure, this provision could result in a consumer having less information about a particular prepaid product than they would have had in the current marketplace. In such circumstances, although the long form disclosure must always be made available (*e.g.,* through a telephone number or a Web site), some consumers may consider the search cost too high to justify seeking out the long form. Therefore, § 1005.18(b)(3)(i) may create a distinct new cost to consumers if it results in them not having all the information they want or need to make their purchasing decision.

One consumer advocacy group and a number of industry commenters, including trade associations, prepaid program managers, issuing banks, a law firm commenting on behalf of a coalition of prepaid issuers, and a payment network provider cautioned that requiring the disclosure of the highest potential fee could be misleading. One consumer advocacy group and a number of trade associations further cautioned that the disclosure of the highest potential fee could result in the elimination of useful fee waivers, such as a program that allows a number of free customer service calls per month before a fee is charged. Several industry commenters, including an issuing bank and a trade association specifically recommended permitting inclusion in the short form disclosure of the conditions under which the monthly fee could be waived, citing the importance of this fee and the prevalence of discounts and waivers applicable to this fee as crucial to consumer decisions in choosing a prepaid card. A consumer group said its research showed that 14 of 66 prepaid cards disclose that the monthly fee can be waived entirely if the consumer takes certain actions.

The Bureau is requiring disclosure of the highest possible fee both because doing so significantly reduces the complexity of the short form disclosure, and because doing so significantly reduces the chances that a consumer will be caught off guard by an unexpected fee or an unexpectedly large fee. Financial institutions can bring the existence of potentially lower fees to consumers' attention through the use of an asterisk, and these beneficial fee waivers can be marketed to consumers elsewhere on the retail packaging, the firm's Web site, or over the phone. In addition, based on the prevalence of monthly fee waivers and recommendations from both industry and consumer group comments, the Bureau has included in the final rule a provision enabling financial institutions to disclose details regarding waivers to the periodic fee using a second symbol, such as a dagger. The final rule also permits inclusion in the short form disclosure for payroll card accounts and government benefits accounts of a statement directing the consumers to a location outside the short form for information on ways to access funds and balance information for free or for a reduced fee.

One State government agency, and a number of industry commenters, including trade associations, prepaid program managers, issuing banks, a law firm commenting on behalf of a coalition of prepaid issuers, and a credit union service organization, questioned the benefit of requiring both short form and long form disclosures. These commenters essentially suggested that the Bureau is requiring redundant information and placing unnecessary burden on industry participants. Commenters further argued that multiple disclosures will add to consumer confusion. The Bureau used results from its consumer testing to design a tiered disclosure regime in order to provide consumers with a manageable amount of information when first engaging with a product, while not limiting consumers' ability to obtain additional information if they choose to do so. The information provided on the short form disclosure aligns with what the Bureau believes consumers value most in their shopping and decision-making processes. The long form disclosure guarantees that any consumer who wishes to search for additional fee information can do so easily. The combination of the short form and long form disclosures allows for an accurate depiction of a prepaid account's fee structure, enabling consumers to quickly comparison shop on key fees and terms, while ensuring that comprehensive information is available to them should they decide to use it.

A trade association and several industry commenters, including prepaid program managers and an issuing bank, noted that in order to compete on the number of additional fee types metric, financial institutions may reduce the number of optional features that are beneficial to consumers but which carry a fee, such as the option to purchase

[769] *See* 2014 Pew Survey at 13.

cashier's checks. The Bureau agrees that financial institutions will have to weigh the benefits of providing fee-based services with the potential costs of disclosing the existence of additional fees on the short form disclosure. However, the Bureau anticipates that the services that consumers care most about will remain marketable and therefore financially viable; and these services are therefore likely to remain available to consumers.

This final rule also differs from the proposed rule in that it requires that the number of fee types is disclosed as opposed the number of to individual fees. This change allows for fee variation within fee types, such that different fees for a similar service, such as standard and expedited delivery of a replacement card, are considered a single fee type. This enables financial institutions to maintain the flexibility to offer useful services to consumers without it reflecting negatively on their products.

b. Benefits and Costs to Covered Persons

This section primarily considers the benefits and costs to a covered person from developing, maintaining, and delivering the new pre-acquisition disclosures. Some of the content and the method of delivery (*e.g.,* web, phone, or retail) depend on how the consumer acquires the prepaid account, and some of the disclosures are also generally available outside of account acquisition (*e.g.,* on the web or by phone). To fully consider the costs of these disclosures, we address the costs that arise in four cases: (i) The development and maintenance of pre-acquisition disclosures, (ii) delivery of pre-acquisition disclosures outside of account acquisition; (iii) delivery of pre-acquisition disclosures for accounts acquired outside the retail channel;[770] and (iv) delivery of pre-acquisition disclosures for accounts acquired within the retail channel. We also consider (v) the benefits of these disclosures.

Regarding the modified initial disclosure requirements, § 1005.7(b) currently requires financial institutions to provide certain initial disclosures for accounts subject to Regulation E, and this final rule extends this provision to prepaid accounts. Generally, the Bureau believes that financial institutions already disclose full terms and conditions for prepaid accounts in their account agreements, which include most or all of what is required by § 1005.7(b). The disclosure requirements of § 1005.7(b) (not considering the modifications in § 1005.18(f)(1), which are considered below) will therefore entail very small cost to covered persons.

The Bureau also recognizes that certain financial benefits to consumers from the disclosures may have an associated financial cost to 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.

i. The Development and Maintenance of Pre-Acquisition Disclosures

Sections 1005.18(b)(2) through (9) set forth the content and form requirements for the short form and long form disclosures. To satisfy these requirements, financial institutions will incur one-time costs of designing compliant disclosures. Based on pre-proposal industry outreach, the Bureau understands that the design process will require as many as 100 labor hours per prepaid account program, 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 for the short form disclosure and a sample form for the long form disclosure.[771] The Bureau is also providing native design files for print and source code for web-based disclosures for all of the model and sample disclosures forms included in the final rule to aid in their development.[772]

Financial institutions will incur ongoing costs of maintaining the short form and long form disclosures pursuant to § 1005.18(b)(2) through (7). The magnitude of these costs will vary by financial institution and will depend on current practices and the acquisition channels used to sell prepaid accounts. Under the final rule, the long form and the static portion of the short form disclosure will require updating at most as often as a prepaid product's account agreement is updated; and based on industry outreach, the Bureau believes that financial institutions rarely change the prepaid account agreements of their prepaid products in a way that would require changes to the pre-acquisition disclosures. When a change to the disclosures is required, financial institutions that sell prepaid accounts online and over the phone will incur small costs to update their Web sites and interactive voice response (IVR) systems. Financial institutions that sell prepaid accounts in a branch setting will incur small costs to update and print new disclosures.[773] Financial institutions that sell prepaid accounts in retail stores may incur costs to update packaging. These acquisition channel-specific costs are discussed in detail in the sections below.

Financial institutions will incur one-time and ongoing costs to comply with the short form disclosure's required statement regarding the number of additional fee types charged pursuant to § 1005.18(b)(2)(viii)(A) and disclosure of additional fee types pursuant to § 1005.18(b)(2)(ix). As discussed in greater detail above, the additional fee types portion of the short form requires disclosure of the two fee types that generated the most revenue from consumers over the prior 24-month period for that particular prepaid account program that are (1) not already disclosed in the static portion of the short form disclosure and (2) not less than 5 percent of total revenue from consumers for that 24-month period. These fee types could vary over time for a given account program due to changes in how consumers use the card or due to changes in the program itself. In either case, financial institutions are responsible for updating the disclosure of additional fee types portion of their short form disclosures. The reassessment must occur at a minimum frequency of every 24 months and financial institutions will have 90 days from the end of the 24 month period to reassess and update the disclosure of additional fee types on their short form.

Financial institutions are also required to reassess the statement regarding the number of additional fee types disclosure and the disclosure of additional fee types whenever a program's fee schedule is revised. In situations where a financial institution does not have data to calculate fee

[770] This treatment considers five significant acquisition channels for prepaid accounts: The retail channel (*i.e.,* in-person, in a retail location); in-person, in a non-retail location, such as a bank or place of employment; orally, over the telephone; electronically, via a Web site or mobile application; and via direct mail.

[771] One trade association representing credit unions commented that the design costs would be $300 per form.

[772] These files are available at *www.consumerfinance.gov/prepaid-disclosure-files.*

[773] Financial institutions that sell another financial institution's prepaid accounts in pre-printed packages are covered under the retail location exception and will incur costs similar to that of a typical retail store.

revenue, such as the addition of a new fee or at the start of a new prepaid program, the financial institution must reasonably anticipate the fees that generate the most revenue over the next 24 months and determine if any fees must be disclosed in the additional fee types portion of the short form. Newly printed card stock must be accurate at the time the fee schedule change goes into effect.[774]

Regarding one-time costs, financial institutions may need to update their accounting systems or practices to evaluate fee revenue from all sources on a 24-month basis. Based on comments received from industry participants, and for reasons explained in the Alternatives section below, 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.

Regarding ongoing costs, for a given prepaid account program, the burden of updating short form disclosures due to changes in the additional fee types portion will depend on the frequency with which the top two additional fee types change for that product and the channel through which that product is distributed. Similarly, if a financial institution changed its product, then it will be required to populate the additional fee types portion with a reasonable estimate of the fees that would match the additional fee types portion's criteria. The Bureau believes the costs of updating the additional fee types portion are very small for acquisition channels where disclosures are not printed on packaging material. As explained above, financial institutions would have 90 days to reassess and update the additional fee types portion on their short form disclosures.

A number of industry commenters, including trade associations, an issuing bank, an issuing credit union, program managers, and payment network providers, suggested that the ongoing cost of updating the proposed incidence-based portion of the short form disclosure would have been overly burdensome. Some commenters, including a trade association, a law firm commenting behalf of a coalition of prepaid issuers, and a payment network provider, suggested that the annual reassessment would have resulted in changes from year to year of the most commonly-charged fees and therefore create costs to update disclosures, despite the fact that the prepaid product itself had not changed. However, the Bureau learned in comments from industry participants that the fee types that generate the highest *revenue* from consumers, which replaces the proposal's requirement of disclosing fees with the highest incidence, do not change regularly on an annual basis. In addition, the final rule created a 5 percent de minimis revenue threshold, below which an additional fee types would not need to be disclosed.[775] This threshold eliminates the need to disclose low-revenue fee types and therefore may reduce the frequency with which short form disclosures will need to be updated.[776] In addition, final § 1005.18(b)(2)(ix)(A) allows financial institution to consolidate the calculation of additional fee types across all prepaid account programs that share the same fee schedule, potentially limiting burden for issuers with many programs. The final rule also increases the amount of time between reassessments from 12 months to 24 months, which should lessen the probability of disclosed additional fee types differing from period to period while also lessening the amount of time that must be spent on reassessment. The Bureau believes that while there may be costs to financial institutions to update systems in order to track revenue and how different fee types contribute to revenue, once those systems are updated the burden on financial institutions due to the reassessment of fee types that generate the highest revenue from consumers will be small.

ii. Delivery of Disclosures Outside of Account Acquisition

A number of the provisions detailed above require financial institutions to provide or make available pre-acquisition disclosures orally via a telephone. The Bureau expects that compliance with these provisions may require implementation costs of updating an IVR system, training live customer service agents, or both. To the extent that the provisions increase usage of financial institutions' telephone systems, financial institutions may incur additional ongoing costs of utilizing or operating these systems. Financial institutions will also bear small ongoing costs of monitoring and updating their telephone systems to ensure that they provide accurate information.

The Bureau learned in its pre-proposal industry outreach that 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 will 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, live agent customer service, or both. Based on a review of current prepaid account fee schedules and the long form disclosure requirements, the Bureau estimates that a long form disclosure could be provided orally, on average, in approximately 4.5 minutes. Therefore, if a consumer calls for more information and listens to the entire long form disclosure, via an IVR system, then this would cost the financial institution approximately $0.54 per call.[777] This estimate could increase if financial institutions offer consumers the option to speak to a live agent before or after the long form is disclosed by an IVR system. Based on pre-proposal outreach, the Bureau estimates that approximately 4.2 percent of callers to an IVR system with a live agent option get forwarded to a live agent, and the average service time for a live agent is approximately 5.1 minutes. Therefore, if all financial institutions offer a live agent option, then the cost to the industry would increase, on average, by $0.19 per call to approximately $0.73 per call.[778] However, financial institutions have an incentive to get consumers the information they value most in the shortest amount of time to minimize costs. Financial institutions also have the flexibility to order the information in the long form disclosure while maintaining the grouping of fees by

[774] In rare cases where a fee schedule change is necessary to maintain or restore the security of an account or an EFT system as described in § 1005.8(a)(2), the financial institution must complete its reassessment and update its disclosures, if applicable, within three months of the date it makes the fee schedule change permanent.

[775] If a financial institution is required to disclose fewer than two additional fee types, it may still choose to disclose up to two fees in the space reserved for additional fee types. A financial institution could use this option to disclose fees that it believes may be required as additional fee types in future years due to fluctuations in consumers' use patterns. This would further reduce expected costs incurred due to updating the additional fee types portion of the short form disclosure.

[776] Some commenters claimed that while fees may not vary much in an absolute sense, very low incidence fees may be volatile relative to each other, and that the ranking of fees might therefore change relatively often. This provision ensures that low revenue fees are not considered for the additional fee types portion of the short form, and therefore, that this type of volatility will not create additional costs for financial institutions.

[777] The Bureau believes that financial institutions will use IVR systems to respond to customers who call for information that is on the long form. This belief is based on the cost of live agents relative to IVR systems and the repetition involved in disclosing the long form to customers.

[778] Here, $0.19 = 4.2% * 5.1 minutes * $0.90/minute; and $0.73 = $0.54 + $0.19.

categories of function. This will allow financial institutions to order the information presented orally in the long form disclosure by relative importance to consumers. Those consumers who call searching for a single piece, or small set, of information could shorten the length of time that they spend on the phone because they will acquire the information they need to make their decision before the entire long form is disclosed. Therefore the average call length of consumers in retail settings will likely be less than the Bureau's 4.5 minute estimate.[779]

A number of the provisions detailed above require financial institutions to provide, or may result in financial institutions providing, pre-acquisition disclosures electronically via a Web site. The Bureau believes that all current prepaid account providers already maintain 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 provisions increase usage of financial institutions' Web sites, financial institutions may bear additional ongoing costs of bandwidth usage. In addition, financial institutions will be required to design an electronic version of the relevant disclosures, and therefore will bear a one-time web-design cost. The Bureau believes this cost will be relatively small and also mitigated by the Bureau's provision of model forms, sample forms, and native design files for print and source code for web-based disclosures for all of the model and sample forms included in the final rule. The total burden of these costs for any single financial institution will 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 will bear small ongoing costs of monitoring and updating their Web sites to ensure that they provide accurate information.

In addition to providing pre-acquisition disclosures to consumers on an ongoing basis, financial institutions are required to provide notices of changes to consumers when certain changes are made to their accounts. Specifically, § 1005.18(f)(2) provides that the change-in-terms notice provisions in § 1005.8(a) apply to any change in a term or condition that is required to be disclosed under § 1005.7 or § 1005.18(f)(1). The Bureau does not believe that these requirements introduce a significant cost. Based on pre-proposal industry outreach, the Bureau believes that financial institutions rarely alter their fee structures, and when such a change does occur, financial institutions are generally already providing these notices to consumers due to the FMS Rule, State laws, or as a best practice.

If a financial institution changes a prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, a financial institution must notify consumers with accounts acquired before October 1, 2017 at least 21 days in advance of the change becoming effective, provided the financial institution has the consumer's contact information. If the financial institution obtains the consumer's contact information fewer than 30 days in advance of the change becoming effective or after it has become effective, the financial institution is permitted instead to provide notice of the change within 30 days of obtaining the consumer's contact information.

For prepaid accounts governed by § 1005.18(h)(2)(ii) or (iii), if a financial institution has not obtained a consumer's consent to provide disclosures in electronic form pursuant to the E-Sign Act, or will not be mailing or delivering written account-related communications to the consumer within the time periods specified in § 1005.18(h)(2)(ii) or (iii), then the financial institution will be able to provide to the consumer a notice of a change in terms and conditions or required or voluntary updated initial disclosures as a result of this final rule taking effect in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

Financial institutions with prepaid accounts that offer overdraft credit features are likely to trigger this requirement. For any consumer who has not consented to electronic communications and who will be receiving other physical mailings from the financial institution in the specified time period, that financial institution will incur a cost of printing the notice, which can be included in the envelope or package which was already scheduled to be delivered. It is unlikely that the financial institution will incur additional mailing costs to send these notices. The remaining notices of change may be sent to consumers electronically. Therefore, the Bureau believes that the cost associated with providing these notices is minimal.

iii. Delivery of Pre-Acquisition Disclosures for Accounts Acquired Outside the Retail Channel

In-person (non-retail locations) and direct mail acquisitions will require the short form and long form disclosures to be provided on paper. The long form disclosure must be provided pre-acquisition, and all the fees and information required on the long form must also be included as part of the prepaid account agreement. For each prepaid account sold, this will entail additional costs of materials (*e.g.,* printing, paper) and personnel training (*e.g.,* training personnel to provide both forms in these settings).

Acquisitions that do not occur in person, such as those that occur over the telephone, via direct mail, or electronically, may result in financial institutions sending consumers an account access device via the mail. Section 1005.18(f)(1) requires financial institutions to include all of the information required to be disclosed in the long form as part of the initial disclosures given pursuant to § 1005.7. Accordingly, financial institutions that offer these methods of account acquisition may incur new ongoing costs in the form of increased shipping costs and increased materials costs. However, financial institutions typically include the prepaid account agreement with the access device they send to consumers. Therefore, the cost to include the long form disclosure in the mail will be minimal, likely at a cost of printing an additional sheet of paper.

As discussed above, § 1005.18(b)(1)(iii) requires a financial institution to orally disclose the short form disclosure before a consumer acquires a prepaid account orally by telephone. Financial institutions will be able to choose between disclosing the information required by the long form disclosure orally prior to acquisition, and communicating prior to acquisition that the information required by the long form is available both orally by telephone and 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 in generality above. Because the labor and capital necessary to conduct business over the telephone may also be used to disclose the fees and other information required in the short form and long form disclosures, the Bureau believes that the costs of providing disclosures orally over the

[779] If, for example, the average call length were instead half of the 4.5 minute estimate, then each call would cost, on average, approximately $0.27. If a financial institution includes the option to speak to a live agent, then each call would cost, on average, approximately $0.46.

telephone will be substantially mitigated for financial institutions that already transact over the telephone. The Bureau estimates that the short form disclosure can be disclosed orally, on average, in approximately one minute. This requirement will add a cost of approximately $0.12 per call if the financial institution uses an automated system to disclose the short form disclosure, plus an additional $0.54 if the consumer asks to hear the long form disclosure. If the disclosure regime prompts the consumer to ask questions, the financial institution would also incur costs for additional live agent time. The Bureau estimates that the cost to the prepaid industry to disclose the required information during sales calls is approximately $324,300 to $346,300 per year.[780]

Pursuant to § 1005.18(b)(6), prepaid account acquisitions conducted electronically (for example, via a Web site or a mobile application) will necessitate electronic disclosure of both the short form and long form disclosure prior to acquisition. Financial institutions may choose the manner of electronic disclosure. However, electronic disclosures must be provided in a manner which is reasonably expected to be accessible to the consumer given how the consumer is acquiring the prepaid account. The cost of this provision will depend on the manner in which the financial institution complies; however, given that the financial institution can generally provide disclosures in the same format in which the acquisition occurs, the Bureau expects that this provision will result in very little additional cost. For example, the costs of providing disclosures electronically, via a Web site, were considered above; however, because financial institutions that transact via a Web site must successfully operate a Web site, they also already bear most costs associated with disclosing information via a Web site, such as the cost of updating and maintaining a Web site. Similarly, because financial institutions that transact via a mobile application must successfully operate a mobile application, they also already bear most costs associated with disclosing information via a mobile application. Moreover, the Bureau believes that such financial institutions generally already disclose fees and account agreements electronically, further reducing the marginal burden of this provision.

One industry commenter asserted that requiring the short form and long form disclosures during electronic acquisition will confuse consumers and increase the number of potential customers who abandon the sign-up process. The Bureau conducted multiple rounds of consumer testing to ensure that the disclosures that it designed were straightforward and provided consumers with useful information for their purchasing decisions. While the Bureau did not specifically test the disclosure regime in an electronic setting, the Bureau believes that a consumer who is shopping for a prepaid card online or through an app is likely familiar with electronic disclosures. Further, information and formatting requirements that the final rule imposes for disclosures provided electronically will ensure that those disclosures are comparable to the disclosures provided in the retail setting. Therefore, the Bureau disagrees with the assertion that electronic disclosure of the short form and long form will confuse consumers. If, instead, a consumer chooses not to purchase a prepaid product electronically because the disclosures make the consumer more informed, then there will be a cost to the financial institution but also a benefit to the consumer.

Financial institutions that offer payroll card accounts or government benefit accounts could potentially incur additional costs to disclose in the short form the statement required by § 1005.18(b)(2)(xiv)(A) or § 1005.15(c)(2)(i), as applicable, regarding alternate forms of accepting wages, salary, and benefits. Additional costs could accrue, for example, if the additional disclosure caused the short form disclosure to exceed the space constraints of current payroll card account packaging materials or government benefit account packaging materials. However, the Bureau believes that in these contexts, prepaid accounts are not usually distributed within space-constrained packaging, and that the short form disclosure requirements could be easily met if, for example, the financial institution provides the short form disclosure on an 8½ inch by 11 inch sheet of paper.[781] If it is the case that the statements regarding a consumer's payment options 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 as a result of this disclosure. However, EFTA and current Regulation E already prohibit financial institutions and other persons, including employers, from requiring a consumer to establish an account with a particular institution as a condition of employment or receipt of a government benefit,[782] and therefore it is possible that the cost of these provisions will be mitigated since some consumers may have already been informed that they had other options.

One member of Congress, several State government agencies, one county government agency, and a number of industry commenters, including trade associations, program managers, issuing banks, payment network providers, and employers, stated that the proposed notice regarding payment options would be seen as a warning and would dissuade consumers from accepting a payroll card account or government benefit account. The member of Congress and State government agencies further suggested that the proposed statement would impel consumers to ask to receive their government benefits through paper checks, which are more costly to government agencies than prepaid accounts. The member of Congress requested that the Bureau quantify the impact on taxpayers of requiring government agencies disclose the statement of payment options.

As discussed in greater detail above in the section-by-section analysis of § 1005.18(b)(2)(xiv)(A), the Bureau made changes to the statement of payment options in the final rule in response to comments that the proposed language would drive consumers away from prepaid accounts. Most participants in the Bureau's post-proposal consumer testing expressed essentially neutral feelings about both versions of the statement and appeared to be drawing on past experiences, rather than the language in the statement, to decide whether or not they would want to use the payroll card account or the

[780] See the discussion in the previous section for per call cost estimates. The Bureau estimates, using load amount and issuance forecasts from Mercator Advisory Group reports, that approximately 102 million prepaid cards will be acquired in 2016. Mercator Advisory Group, *Tenth Annual U.S. Prepaid Cards Market Forecasts, 2013–2016,* at 16–17 (Oct. 2013), and Mercator 12th Annual Market Forecasts. The Bureau estimates, using a share of 1 percent (2014 Pew Survey at 5) that approximately 1 million of the 102 million prepaid cards will be acquired by telephone. If approximately 1 to 5 percent of consumers ask to hear the long form disclosure when acquiring an account via telephone, then the cost to the prepaid industry to disclose the required information during sales calls is approximately $324,300 to $346,300 per year.

[781] The Bureau's industry outreach revealed that in some cases payroll card accounts and government benefit accounts are distributed in envelopes that also contain fee disclosures, the account agreement, and marketing materials. The model short form that includes this payroll card account notice easily fits within these constraints. *See* Model Form A–10(b).

[782] § 1005.10(e)(2).

government benefit account.[783] Under the final rule, financial institutions have the option to display a generic statement that consumers have options available to them to receive their payments, or to list the specific options that are available to the consumer. As discussed above, the Bureau believes that the required disclosure will impose a small impact on financial institutions that might experience a cost if a consumer declines to acquire a prepaid account. Further, for reasons discussed in the paragraphs that follow, the Bureau believes that the disclosure will impose a small impact on government agencies that might experience a cost if a consumer instead chooses to accept paper checks.

In the Board's annual report to Congress on government-administered prepaid cards, it reported that of the $148 billion in government benefits disbursed through prepaid cards in 2015, five program types accounted for 97 percent of disbursed funds.[784] The remaining program types each account for less than 1 percent of total funds disbursed. Two of the top five program types, SNAP and cash assistance programs, are needs-tested, State-administered programs and will therefore not be impacted by the final rule because they are excluded from coverage under EFTA and Regulation E. The remaining three program types, Social Security benefits, unemployment insurance payments, and child support payments, are subject to the disclosure requirements of the final rule and account for approximately 44 percent of all benefits disbursed through prepaid cards.

In 2010 the Treasury finalized a rule that requires that all recipients of Federal nontax benefits receive payment by EFT by May 1, 2013.[785] Only those born prior to May 1, 1921 who are already receiving paper checks may continue to receive paper checks without a waiver. Waivers can be issued for consumers for whom the EFT requirement creates a hardship due to a mental impairment, or due to a recipient living in a remote area without sufficient banking infrastructure. Social security payments are Federal nontax benefits and are therefore subject to this Treasury rule. The vast majority of Social Security recipients are therefore required to receive EFT payments and will not be given the option to receive paper checks. Therefore, this final rule will have virtually no impact on the cost to the Federal government of disbursing benefits.

The remaining two large government disbursement programs, unemployment insurance payments and child support payments, are State-administered. State laws determine the methods by which benefits recipients can receive payments.[786] If every benefits recipient under these two programs who is currently receiving payments to a prepaid card were instead to receive payments by paper check, the cost to States would be considerable. The Bureau estimates that each benefits recipient that chooses to receive paper checks instead of payments into a prepaid account or other electronic payment option would result in a cost to States of $11.10 to $24.05 per year.[787] However, a number of State agencies no longer offer recipients the option to receive paper checks,[788] and therefore, the number of consumers who would have the option to receive paper checks in lieu of payments to a prepaid card is a fraction of the total number of government benefit account recipients.

The Bureau believes that this final rule will not impose a significant cost on States that disburse benefits to prepaid accounts. The rule will have virtually no impact in States that restrict payment methods to EFT because consumers will not have the option to receive paper checks. In addition, the Bureau believes, based on the neutral reaction of consumers to the statement of payment options during the Bureau's post-proposal consumer testing, that it is unlikely that a large proportion of consumers will not opt to receive benefits to a prepaid account due to a negative reaction to the statement of payment options, and therefore, any impact in States that still allow for paper checks will be small. Moreover, the statement of payment options is provided to consumers pre-acquisition. Therefore, current government benefits recipients that hold prepaid accounts should be unaffected, and any change to the number of payments made using prepaid accounts will only come due to the choices of new recipients. Accordingly, any impact the disclosures do have will take place gradually. If, for example, the disclosure requirements prompt consumers to ask about their options and 1 percent of consumers who would have accepted a prepaid account now ask for paper checks, then the rule will result in costs to the States of approximately $555,000 annually.[789]

Under § 1005.18(b)(9), a financial institution must provide the short form and long form disclosures in a foreign language, if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in the following circumstances: (1) It principally uses a foreign language on prepaid account packaging material, (2) it principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically, or (3) it provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. In addition, the financial institution is also required to provide the information required to be disclosed on the long

[783] ICF Report II at 16–17 and 27.

[784] 2015 FRB Government Prepaid Cards Report at 1 and 6.

[785] 75 FR 80315 (Dec. 22, 2010).

[786] State laws must not be inconsistent with Federal Regulation E requirements, including the requirement that consumers are given a choice among electronic methods of delivery.

[787] The increased cost for payments via paper check is determined by the difference in cost to the Treasury of a payment by paper check ($1.03) and an electronic payment ($0.105), for a cost increase of $0.925 per payment. Per payment cost increase is then multiplied by the expected number of payments per year based on the benefits program (assumed monthly for child support payments and biweekly for unemployment payments). See the Bureau of the Fiscal Service Web site, *available at https://www.fiscal.treasury.gov/fsservices/gov/pmt/eft/eft_home.htm.*

[788] Paper checks do not appear as an option for consumers to receive unemployment insurance on the Web sites of the five most populous States. This is also the case for child support recipient payments in in two of the five most populous States.

[789] The Bureau estimates that the cost of all prepaid benefits recipients switching to paper checks would total approximately $60 million per year. Therefore a 1 percent change from EFT options to paper checks would result in a cost of $555,000 nationwide. This estimate is based on the total number of parents receiving child support in 2013 (5,697,000), assumed to be paid monthly, and the total number of weeks of unemployment compensated in 2015 (100,692,869), assumed to be paid biweekly, resulting in 68,364,000 total child support payments and 50,346,435 total unemployment payments. The total number of payments to prepaid cards is determined by the percent of disbursements to prepaid accounts as a percentage of total disbursements for child support in 2013 (39.2 percent) and unemployment in 2014 (66 percent). The cost of switching to paper checks is determined by multiplying the total number of payments to prepaid cards by the cost increase of $0.925 per payment (*see* footnote 787).

See U.S. Census Bureau, *Custodial Mothers and Fathers and Their Child Support: 2013,* at 2 tbl.1 (April 2014), *available at http://www.census.gov/people/childsupport/data/files/chldsu13.pdf*, for parents due child support; U.S. Dept. of Labor, *Unemployment Insurance Data Summary, available at http://www.workforcesecurity.doleta.gov//content/data.asp*, 2015 Quarterly Reports Summary Benefits Data, for weeks of unemployment compensated; Bd. of Governors of the Fed. Reserve Sys., *Report to the Congress on Government-Administered General-Use Prepaid Cards,* at 6 (July 2014), *available at http://www.federalreserve.gov/publications/other-reports/files/government-prepaid-report-201407.pdf*, for child support prepaid disbursement share; and the 2015 FRB Government Prepaid Cards Report for unemployment prepaid disbursement share.

form in English upon a consumer's request and on any part of the Web site where it discloses this information in a foreign language. 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 prepaid account agreement. Because, in such cases, the long form disclosure will be required 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 will depend on the amount that these requirements diverge from current practices and the number of languages that financial institutions use to market prepaid accounts. Based on industry outreach, the Bureau believes that most financial institutions that transact in foreign languages also provide disclosures in those foreign languages, and therefore this requirement is unlikely to generate significant additional costs.

Final § 1005.18(b)(2)(x) requires disclosure on the short form of whether the prepaid account might offer the consumer an overdraft credit feature at some time in the future. If an overdraft credit feature might be offered, then the financial institution must also disclose the time period after which it might be offered and that fees would apply. If consumers choose prepaid products in order to avoid overdraft credit features (see discussion in the *Benefits and Costs to Consumers* section above), then this requirement will generate direct costs for financial institutions that offer such features. However, based on its Study of Prepaid Account Agreements of existing prepaid account products, the Bureau believes that very few financial institutions currently offer such features.

iv. Delivery of Pre-Acquisition Disclosures for Accounts Acquired Within the Retail Channel

Through industry outreach, the Bureau understands that the final 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 location, the final rule requires a financial institution to provide the short form disclosure before a consumer acquires a prepaid account. Through pre-proposal discussions with industry participants, the Bureau learned that some financial institutions would not have been able to accommodate the short form disclosure on the exterior of their current packaging materials without making significant changes, such as redesigning of packages. As discussed above, the one-time costs associated with a package redesign are relatively small. However, some financial institutions currently use the exterior of their prepaid account 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 learned from pre-proposal discussions with industry participants that complying with the short form disclosure requirements in § 1005.18(b) as proposed, while maintaining their programs' previous levels of functionality and fraud prevention, could as much as double the per unit cost of printing packaging materials.[790]

As discussed in greater detail above, in a retail location, the financial institution is able to choose between two methods of providing the long form disclosure. As it is required to do in other acquisition channels, the financial institution could provide the long form disclosure before a consumer acquires a prepaid account. Alternatively, the 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 directly access the long form disclosure. Financial institutions that provide the long form disclosure prior to acquisition could potentially bear additional costs to train personnel to provide it in retail locations, as well as shipping and materials costs to provide physical copies of the long form to consumers. Financial institutions choosing to provide the long form after the consumer acquires a prepaid account may bear additional costs of shipping and materials. However, because the long form disclosure may be included with the product's terms and conditions in the prepaid account agreement, which is generally included in the prepaid account packaging, the Bureau believes these costs will be very small. These financial institutions will also 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. The Bureau estimates that if 1 percent to 5 percent of retail consumers call to access the long form then the cost to the prepaid industry of disclosing the long form disclosure orally by telephone would be approximately $148,600 to $1,532,700 per year.[791]

Financial institutions are tasked with maintaining accurate disclosures and account agreements. If a financial institution makes changes to a prepaid account's fees or other terms, then that financial institution will make changes to the account agreements and disclosures, as appropriate, for newly printed cards and packaging. However, the financial institution may continue to sell stock that has already been printed as long as the financial institution honors the disclosed fees and terms, or, in some circumstances, follows Regulation E's system for notifying consumers of changes in terms to existing accounts, set forth in § 1005.8(a).

It is the current practice of some financial institutions, when changing the terms or conditions of a prepaid account agreement, to sell old card stock at retail and inform consumers who purchase old stock that the terms of their account have changed when they register their prepaid account. This final rule subjects prepaid accounts to the protections of Regulation E, which, among other things, requires that a financial institution provide written notice to the consumer, at least 21 days before the effective date, of any change

[790] In pre-proposal discussions, the Bureau learned 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.

[791] The cost per call was considered above. The Bureau estimates that approximately 55 million to 66 million prepaid accounts will be acquired in retail locations in 2016. This estimate was derived by applying retail market shares of 54 percent (2014 Pew Survey at 5) and 65 percent (2013 Aite Group Report) to the estimate of total prepaid card acquisitions in 2016 (*see* footnote 780). The lower bound estimate is obtained by assuming the lower bound of retail acquisitions (55 million), the lower bound of consumers calling for additional information (1 percent), and the lower bound of the average cost per call ($0.27). The upper bound estimate is obtained by assuming the upper bound of retail acquisitions (66 million), the upper bound of consumers calling for additional information (5 percent), and the upper bound of the average cost per call ($0.46).

For 2013 Aite Group report, *see* Aite Group LLC, *Prepaid Debit Card Realities: Cardholder Demographics and Revenue Models,* at 22 (Nov. 2013).

in term or condition that would result in increased fees for the consumer, increased liability for the consumer, fewer types of available EFTs, or stricter limitations on the frequency or dollar amount of transfers. Moreover, as discussed in detail above, the final rule also requires pre-acquisition disclosures. Together, these two provisions implicitly prohibit the practice of making any change to disclosed terms, including changes made at the time of account registration, that would require prior notice to the consumer under § 1005.8(a) or § 1005.18(f)(2), without giving at least 21 days prior notice of the change.

The Bureau understands financial institutions do not change the fee schedules for most prepaid accounts often, especially for prepaid products distributed in person, such as GPR cards and similar products sold at retail. When financial institutions do decide to make changes to their accounts sold at retail,[792] they will generally have two options available to them: Remove old card stock from retail shelves and replace it with new card stock with accurate disclosures (commonly referred to as a ''pull and replace''); or honor the original terms for at least 21 days after providing written notice to consumers of the change in terms, as required under Regulation E, as amended. The Bureau believes that sending change-in-terms notices to consumers after they register their cards is generally more cost effective than conducting a pull and replace.[793] However, financial institutions must also consider compliance with legal requirements under operative State consumer protection and contract laws, difficulties that may arise in attempting to provide notice of changed terms to consumers, as well as financial institutions' concerns about being accused of deceptive advertising practices by selling products with inaccurate disclosures. Therefore, the method which financial institutions choose to maintain accurate pre-acquisition disclosures and the associated costs will vary greatly by program size, system capabilities, proportion of cards sold at retail, the frequency and type of changes to terms and conditions, and how financial institutions judge the risks associated with each option.[794]

Section 1005.18(h)(2)(ii) requires that financial institutions notify any consumer, who acquires a prepaid account on or after the effective date via packaging materials that were manufactured, printed, or otherwise produced prior to the effective date, of any changes to the prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers within 30 days of obtaining the customer's contact information. In addition, financial institutions must also mail or deliver updated initial disclosures pursuant to § 1005.7 and § 1005.18(f)(1) within 30 days of obtaining the consumer's contact information. Those financial institutions that are affected should not incur significant costs to notify consumers and provide updated initial disclosures. Consumers who have consented to electronic communication may receive the notices and updated disclosures electronically, at a minimal cost to financial institutions. Those consumers who cannot be contacted electronically may receive the notices and updated initial disclosures with another scheduled mailing within the 30 day time period. Financial institutions will incur small costs to print these notices and disclosures, but it is unlikely that financial institutions will incur additional mailing costs. Any remaining consumers who are not scheduled to receive mailings may be notified without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

The Bureau believes that the cost of monitoring and updating the additional fee types portion of the short form disclosure in the retail channel will be almost fully mitigated by two factors: First, because financial institutions will be able to phase out and replace old stock at the pace that it is sold (a strategy commonly referred to as ''sell-through'') there should be no costs of product destruction or resetting; and second, because financial institutions could choose their reassessment dates to coincide with their natural product refresh cycle, there will be few additional costs to printing or shipping new prepaid cards.[795]

Industry commenters, including one trade association and one issuing credit union, asserted that the potential adjustments to the proposed incidence-based portion of the short form disclosure would prevent financial institutions from purchasing card stock in bulk, which helps to keep the per unit cost low. However, in the final rule, the Bureau is only requiring that updates to the disclosure of additional fee types portion of the packaging material be made when new stock is printed. Moreover, as discussed above, financial institutions can sell stock printed prior to the reassessment date indefinitely. Accordingly, if smaller institutions purchase in bulk to minimize costs, those institutions would still be able to sell that stock until it is gone. Therefore, complying with the disclosure of additional fee types will not force institutions to alter their ongoing purchasing practices.

Lastly, the final rule requires that prepaid account packaging printed on or after the effective date of October 1, 2017 must be accurate. However, it will allow financial institutions to sell-through prepaid account packaging or other preprinted materials that are prepared in the ordinary course of business prior to the effective date but which do not comply with the final rule's disclosure requirements. This approach to stock manufactured before the effective date in the ordinary course of business will minimize the costs to financial institutions that sell products in the retail setting, and is discussed further in the Alternatives section below.

v. Benefits

Finally, the Bureau recognizes that when a consumer chooses one prepaid

[792] This discussion refers, specifically, to changes in terms or conditions that are required to be disclosed under §§ 1005.7 or 1005.18(f)(1).

[793] The Bureau estimates that pulling and replacing card stock will result in costs of $0.65 to $2.35 per card in retail. The Bureau estimates that sending change-in-terms notices will result in minimal costs for cardholders who can be contacted electronically and up to $0.50 per cardholder who cannot be contacted electronically and must receive a physical change-in-terms notice in the mail, plus the loss of any revenue which is lost while the financial institution must honor the original terms, and plus the cost of any system updates which must take place in order to track individual accounts in order to honor the original terms.

[794] If a financial institution chooses to remove a service from its accounts then it is possible that pulling and replacing product will be the only feasible way to comply with the disclosure requirements of the final rule. The Bureau believes that financial institutions removing services from accounts outside of the immediate situation described in existing § 1005.8(a)(2) occurs rarely, if ever. If this were to occur, financial institutions would incur costs to send change-in-terms notices to existing customers, print new card stock, and reset stock on store shelves.

[795] One prepaid issuer noted that the lead time required before a new production run can range between two and four months (not including the time taken by the production firm itself), and that the lead time grows as deviations from the previous production run increase (changing the packaging dimensions was given as an example of a change that might result in a longer lead time). The Bureau anticipates that changes in retail packaging due to changes in an account's additional fee types alone will constitute minor changes in the account's packaging, and therefore result in lead times at the lower end of this estimate. Given that financial institutions will experience short lead times and flexibility in the timing of additional fee types reassessment, it is likely that reassessments and updates can be scheduled to coincide with natural printing cycles.

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 final rule will yield more such benefits for some financial institutions than for others. However, in line with the discussion of benefit to consumers above, the Bureau believes that the final rule may 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 disclosure) specifically, and fewer types of fees overall, the most.

c. Alternatives Considered

The Bureau considered a number of alternatives to key provisions in the development of the final rule. Industry outreach, consumer testing, and public comments from industry, consumer groups, and others, influenced the evolution of the rule from its proposed form to its current, final form. Modifications to the disclosure requirements for the final rule from those that were included in the proposed rule are discussed in this section as alternatives.

One such alternative would have been the exclusion of third-party fees from the short form, including the requirement to disclose the cash reload fee. This alternative would have required that financial institutions disclose the highest potential cash reload fee that a consumer could incur but without including any fee charged by a third party, such as by the retail location where funds are added. However, through industry comments, the Bureau learned that there is considerable variety in how financial institutions impose cash reload fees. Some firms charge cash reload fees to consumers directly, others do not charge consumers but allow third parties to charge consumers, and others implement some combination of the two methods. Therefore, this alternative could have resulted in poorer purchasing decisions by consumers because it would not have ensured that the cash reload fee disclosure is comparable across products. Moreover, if this alternative were adopted, consumers who purchase products that charge third-party fees might not fully understand that there is considerable variety in how financial institutions impose cash reload fees at the time of acquisition and thereby could have incurred unexpected, additional costs of use. Therefore, this alternative would have undermined the Bureau's stated goal of creating a disclosure regime that provides consumers with complete information so that they can make informed decisions.

The final rule requires that the short form and long form disclosures include a statement regarding account registration and FDIC deposit insurance or NCUA share insurance, as applicable, regardless of whether or not such insurance coverage is available for a prepaid account. An alternative, as would have been required under the proposed rule, is to only require a statement when FDIC deposit insurance or NCUA share insurance is *not* available. This proposed statement was meant to inform consumers, who may assume otherwise, that their prepaid account is not insured. However, the Bureau found through its post-proposal consumer testing that, while consumers understood there was insurance coverage when the disclosure included a statement to that effect, consumers were unsure about whether the prepaid account offered FDIC deposit insurance or NCUA share insurance when presented with disclosures where no statement was included.[796] The final rule requires a statement regarding eligibility for FDIC deposit insurance and NCUA share insurance as well as instructions to register the prepaid account for other protections in programs where registration takes place after the account is opened. This has the benefit of informing consumers about what protections they may have in all circumstances. Since this requires only a concise statement added to the short form and long form disclosures, the burden on financial institutions is negligible. In cases where FDIC deposit insurance or NCUA share insurance is available, the statement could potentially benefit financial institutions by signaling to consumers that their product is safer than non-insured alternatives.

The proposed rule would have required that any prepaid account program which could offer an overdraft credit feature accessed by a prepaid card that would have been a credit card under the proposal must include in its long form disclosure certain fees related to the credit account. One issuing bank recommended that credit features and fees not be included on the long form disclosure because of the proposed 30-day waiting period that prevents financial institutions from offering credit features at or soon after acquisition. The commenter stated that certain charges, such as APR, could vary depending on the creditor or could otherwise change in the 30 day waiting period, and could therefore be inaccurate by the time a consumer consults them. The Bureau has modified the long form disclosure's content requirement regarding the disclosure of credit or other overdraft features in the final rule. Financial institutions will not be required to include all fees applicable to a covered separate credit feature accessible by a hybrid prepaid-credit card on the long form disclosure. This information must still be disclosed to the consumer when credit is offered after the 30-day waiting period (further discussion of the final rule's Regulation Z requirements that are extended to prepaid accounts can be found in the *Requirements Applicable to Covered Separate Credit Features* section below). Instead, financial institution's contact information must be provided so that a consumer that is interested in overdraft credit features has the ability to search for more information. Only credit-related fees that may be assessed against the prepaid account itself must be disclosed. This modification will allow consumers to acquire more information about credit products tied to their prepaid card without requiring that financial institutions disclose information related to credit products before they are ever offered, lessening the burden on covered entities who might offer overdraft credit features. This will create added search costs for consumers who would have otherwise had access to potential credit-related fees and features in the long form disclosure. However, given that the information needed to assess a credit product could vary by consumer or change between the time of acquisition and the time that credit is offered, requiring that financial institutions provide all applicable information to consumers only when an offer of credit is made results in a more accurate disclosure regime overall.

As discussed above, the final rule provides a retail location exception to the requirement to provide the long form disclosure pre-acquisition. The proposed commentary would have stated that a retail store that offers one financial institution's prepaid account products exclusively would have been considered an agent of the financial institution and would therefore have been required to provide both the short form and long form disclosures pre-acquisition. In other words, such a retail store would not have been able to rely on the retail location exception. Several industry commenters, including trade associations, program managers, and an issuing bank, suggested that the proposed definition of agent would have made it difficult for retailers with

[796] ICF Report II at 15.

limited retail space, such as gas stations, to sell prepaid products, because they may only have space for a single product or line of products, and would therefore not be covered under the long form retail exception. This would have unnecessarily burdened small retailers that may be selling a single product due to space constraints and not due to an arrangement with a financial institution. Accordingly, in the commentary to the final rule, the Bureau has expanded the range of entities that would be considered retail locations, including retailers that sell one financial institution's prepaid account products exclusively.

The proposed rule would have required that financial institutions disclose on the short form disclosures, the three fees, not including those already disclosed in the static portion of the short form disclosures, that are incurred most often. As discussed above, the final rule replaces these incidence-based fee disclosures with the requirement that financial institutions disclose the two additional fee types that generate the highest revenue from consumers. The Bureau received comments from a number of industry participants, including trade associations, financial institutions, and program managers that cautioned that financial institutions would incur significant costs to update systems to calculate fee incidence. Industry commenters, including trade associations, an issuing bank, an issuing credit union, and a program manager stated that the data needed to calculate fee incidence is often housed with a third-party data processor, and therefore any calculation would require a transfer of data from the third party to the financial institution. Alternatively, the data processor could create a report for the financial institution (or its program manager, if any), but since the financial institution is ultimately responsible for the accuracy of its disclosures, any report or data provided would still need to be reviewed by the financial institution for accuracy. The commenters warned that these changes would increase costs for data processors and financial institutions, which would ultimately increase the cost of prepaid accounts for consumers.

The Bureau also received comments from consumer groups that suggested that basing additional fee disclosures on revenue was superior to basing additional disclosures on how frequently fees are incurred because a fee's revenue is a direct measure of the impact of that fee on consumers. Incidence-based fee disclosures would have guaranteed that the most commonly charged fees are disclosed, but could result in high impact fees being left off of the short form disclosure if their costs are high but the frequency with which they are incurred is low. Further, a disclosure based on incidence could incent financial institutions to alter their fee structure such that the disclosed incidence-based fees are purposefully low while the undisclosed fees are exceedingly high.

The Bureau believes that while many financial institutions would have incurred costs to calculate fee incidence, most financial institutions already maintain the ability to calculate fee revenue. The Bureau recognizes that some financial institutions will incur a one-time cost to update their agreements with program managers or with third-party data processors in order to obtain the information necessary to tabulate fee revenue by fee type. However, analytics and reporting tools are features that financial institutions value and on which data processors compete;[797] data processors are therefore likely to develop tools to fill this need and then compete to offer the best value to financial institutions, their customers. Moreover, since the requirement to calculate fee revenue is imposed industry-wide, costs passed through from data processors will be spread among all financial institutions, diminishing the cost of this requirement per financial institution. Therefore, while the Bureau recognizes that this requirement may generate new costs, the Bureau does not anticipate that the costs will be significantly burdensome over the long run, and the costs will be less burdensome than the costs would have been under the proposed rule's incidence-based disclosure requirement.

Lastly, the proposed rule would have required that all disclosures of prepaid accounts sold in retail locations comply with the rule's pre-acquisition disclosure requirements within 12 months of the rule's effective date. If a financial institution had not sold all of its prepaid account products in packaging printed prior to the end of the 12-month period, the proposed rule may have resulted in financial institutions destroying and replacing such stock (commonly referred to as a ''pull and replace''). The costs associated with a pull and replace includes 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. Through pre-proposal industry outreach, post-proposal industry outreach during and after the comment period, and reviewing comments submitted by industry commenters, the Bureau has learned that the cost to a financial institution of conducting a pull and replace is high. In addition, coordinating with retailers adds a layer of complexity due to issues of timing with retailer product reset schedules, requirements of some retailers to source merchandising to third-party vendors, and general negotiations that must take place. Further, the cost of a pull and replace may have disproportionately affected small entities that might purchase card stock in bulk to keep the per-unit cost of printing low. As discussed in the proposal, based on pre-proposal industry outreach, the Bureau estimates that after 12 months, 40 percent of total prepaid account stock will remain in distribution. Thus, the cost to the prepaid industry to conduct a large-scale pull and replace might have been significant.

As discussed above, the final rule requires that newly printed retail prepaid account packaging materials must be accurate if printed on or after October 1, 2017, but allows financial institutions to sell through prepaid account packaging or other preprinted materials prepared in the ordinary course of business prior to October 1, 2017 that do not comply with the final rule's disclosure requirements. This will enable financial institutions to phase out and replace old stock at the pace that it is sold. A sell-through strategy should prove to be significantly less expensive than a pull and replace for many financial instructions. This modification will come at a cost to consumers who may not fully realize the benefits of the prepaid disclosure regime immediately at retail locations because old packaging remains in commerce. For example, a consumer who is contemplating the purchase of a prepaid account in the retail setting may be provided with old disclosures that do not incorporate important fee information required by the final rule during a transition period. For this limited period of time, a consumer may have difficulty comparing multiple products with older disclosures, and to compare multiple products with a mix of older disclosures and updated disclosures. Over time, however, the eventual replacement of old stock will result in consumers having the full benefits of a thoughtfully designed and tested disclosure regime.

[797] Javelin Strategy & Research, *Choosing a Prepaid Processor in an Evolving Market: A Study on Issuer and Program Manager Needs,* at 12 (Nov. 2008), *available at https://visadps.com/download/Visa-DPS-prepaid-processing.pdf.*

2. Applying Regulation E's Periodic Statement Requirement With Modification and Providing an Alternative Means of Compliance With the Requirement

While expressly defining prepaid accounts as accounts subject to Regulation E, the final rule also provides an alternative means of compliance with Regulation E's periodic statement requirement. The alternative means of compliance is a modified version of the alternative means of compliance offered to payroll card account providers under current § 1005.18(b)(1). Section 1005.15(d) of the final rule also modifies 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.

Under current § 1005.18(b), a financial institution 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, under current § 1005.15(c), 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.

The final rule requires that 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 12 months of transaction history electronically, and, if requested by the consumer, provide at least 24 months of transaction history in writing. For those payroll card account providers and providers of prepaid accounts that receive Federal payments that are currently 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 provision extends the present requirement to provide 60 days of transaction history to 12 months when provided electronically and 24 months when provided in writing. For government agencies that are currently required to comply with the Regulation E periodic statement requirement, this provision additionally requires electronic access to government benefit account history information as part of the alternative means of compliance, which current Regulation E does not require.

Regardless of how a financial institution chooses to comply, the final rule also requires that the financial institution disclose to the consumer a summary total of the amount of all fees assessed against the consumer's prepaid account for both the prior month as well as the calendar year to date. This information must be disclosed on any periodic statement and any electronic or written history of account transactions provided.[798] Finally, for financial institutions following the alternative means of complying with the periodic statement requirement, the final rule extends to prepaid accounts modified requirements for initial disclosures regarding access to account information and error resolution, as well as annual error resolution notices.[799]

a. Benefits and Costs to Consumers

Extending Regulation E's periodic statement requirement to all prepaid accounts will 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 transactions for both budgeting and the identification of errors.

The final rule requires that financial institutions disclose to the consumer summary totals of the amount of all fees assessed against the consumer's prepaid account on any periodic statement, any written history of account transactions, and any electronic history of account transactions.[800] This disclosure will make the cumulative costs associated with the use of the prepaid account accessible and transparent to consumers.

The final rule also requires that those financial institutions relying on the alternative means of complying with the periodic statement requirement make accessible at least 12 months of transaction history electronically and, if requested, at least 24 months of transaction history 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, housing and employment applications or tax filings; in these situations, they may benefit from having up to 24 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. In order to fully exercise these protections, consumers must be able to access at least 120 days of transaction history.

The final rule requires that at least 12 months of transaction history provided as part of the alternative means of compliance with the periodic statement requirement be provided electronically. As discussed further below, the Bureau's understanding is that, while prepaid accounts generally are not subject to this requirement at present, most financial institutions offer electronic access to prepaid accounts' transaction histories and a substantial number of them maintain 12 months of transaction data in some electronic format.

In developing the proposed rule, the Bureau considered how consumers prefer to obtain information about their transaction history. In focus group research, the Bureau generally found that consumers were satisfied with the amount of information they receive regarding their transaction history (either online, through text message, or over the telephone) under existing industry practice, and they generally did not express a desire to receive a paper statement.[801] Several industry participants the Bureau spoke with during its pre-proposal 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-

[798] For periodic statements, the monthly summary may be for the statement period or for the prior calendar month; for other transaction histories, it must be for the prior calendar month.

[799] Current § 1005.18(c)(1) and (2) for payroll card accounts, § 1005.18(d) for prepaid accounts, and current § 1005.15(d)(1) and (2) for government benefit accounts, revised as § 1005.15(d)(1) and (2).

[800] § 1005.18(c)(5). With respect to government benefit accounts, § 1005.15(d)(2) provides that for government benefit accounts, a government agency must comply with the account information requirements applicable to prepaid accounts as set forth in § 1005.18(c)(3) through (5).

[801] ICF Report I at 10.

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.[802]

Many consumers participating in the Bureau's focus groups also stated that they monitor their account balance using the internet and mobile devices.[803] 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 accounts. One survey of consumers with prepaid accounts asked consumers how they check their balances, and found that more than half sometimes use a phone call, more than half sometimes check online, and text message alerts, email alerts, and smartphone apps were each used by more than a third of respondents.[804] 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.[805] 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.[806]

Although consumers generally have access to written transaction history information at present, many financial institutions currently charge fees for written account information, and in these cases the final rule will lower the cost to consumers of accessing account information in this way. Of the 66 GPR card programs reviewed by one organization, 68 percent disclosed a fee for paper account statements ranging from 99 cents to $10 (median $2.95).[807] As discussed below, the Bureau's discussions with industry participants suggest that few consumers currently request paper transaction histories or statements. It is worth noting, however, that if financial institutions are unwilling to comply with the new rule by providing paper transaction histories or 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 mean that consumers who cannot or choose not to provide E-Sign consent will have access to a more limited range of prepaid accounts.

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 will depend on the financial institution's current business practices and whether the financial institution chooses to avail itself of the alternative means of complying with the periodic statement requirement. Specifically, financial institutions may comply with the 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 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 pre-proposal 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 is required by the final rule.[808] In many instances, electronic transaction histories currently provided extend well beyond the 60 days currently required for certain prepaid accounts.[809] 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 other than on an ad hoc basis.

The Bureau expects that most financial institutions will 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 will 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 of the final rule will arise from two sources.

First, periodic statements or transaction histories must display a summary total of the amount of all fees assessed against the consumer's prepaid account for the prior month and for the calendar year to date. Financial institutions will need to modify existing statements or electronic transaction histories to include these totals. Second, those financial institutions that do not currently make at least 12 months of transaction history available to consumers electronically or do not maintain access to at least 24 months of transaction history would potentially incur additional data storage costs and may need to implement system changes if they choose to avail themselves of the alternative means of complying with

[802] The program manager reported that consumers viewed the statements for just over 1 percent of active accounts, and consumers downloaded the statements for slightly less than 1 percent of active accounts.

[803] According to a survey conducted by the Board, roughly 87 percent of respondents owned or had regular access to a mobile phone, and roughly 77 percent of those with a mobile phone had a smartphone as of November 2015. Additionally, 89 percent had regular access to the internet, either at home or outside of the home. 2016 FRB Consumers and Mobile Financial Services Survey at 8, 64 tbls.C.21 & C.22. A survey of prepaid card users found that 88 percent use the internet. 2014 Pew Survey at 5 ex.2.

[804] 2015 Pew Survey at 13.

[805] 2014 Pew Study at 17.

[806] Additionally, it found that all of the cards reviewed provided consumers with accessible customer service assistance and IVR systems. 2014 CFSI Scorecard at 12 (Mar. 2014).

[807] 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. The study did not distinguish between periodic statements and other forms of written account history. 2014 Pew Study at 19.

[808] 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. 2014 Pew Study at 36. 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.'' 2014 CFSI Report at 12.

[809] One survey found that ''[e]leven 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.'' 2014 CFSI Report at 12.

Regulation E's periodic statement requirement.[810]

The structure of the costs associated with these changes depends 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. Those financial institutions that format their own periodic statements or transaction histories will incur a one-time implementation cost to capture and summarize fee information and modify their disclosures to display this information.[811] Those financial institutions that currently do not make available 12 months of account history will incur costs associated with obtaining additional electronic storage media to expand existing capacity.

The proposal would have required financial institutions to make available 18 months of account history, and according to discussions with industry participants prior to issuing the proposed rule, the costs associated with such an expansion would have been minimal. In response to the proposal, however, several industry commenters said that they do not currently make available 18 months of account history and that the cost of doing so would be significant. Of these, several commenters noted that they currently provide 12 months of electronic transaction history or that their systems maintain at least 12 months of transaction history in readily accessible electronic format. Industry commenters also noted that older account history information is typically archived and is less readily accessible, but can be retrieved in response to specific requests. One commenter that currently archives account information after six months estimated that it would cost an additional $1.00 per account to keep account information in active, rather than archived, status for 18 months. Because the final rule requires 12 rather than 18 months of transaction history to be made electronically available, and because it permits financial institutions that, as of the effective date, do not have readily accessible the data necessary to provide at least 12 months of electronic account history to gradually increase the number of months of account data that they provide until they have enough account information to fully comply with the requirement, the Bureau believes that the requirement to provide electronic account history information will have a minimal burden for most financial institutions.

Many providers of prepaid accounts rely on processors to provide online portals that give consumers access to account history information. Based on pre-proposal 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.[812] The Bureau expects that these covered entities will 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.[813]

In formulating its proposal, the Bureau conducted outreach to prepaid 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 and information provided by commenters, the Bureau's understanding is that consumer requests for written account histories for GPR cards are infrequent, generally well under 1 percent of active cardholder-months, regardless of whether the consumer is charged a fee for the statement. One commenter stated that it serves over 2 million cardholders and that it receives 750 requests per month for written transaction histories, equivalent to approximately 0.04 percent of all cardholder accounts.[814] The Bureau notes that some financial institutions currently charge consumers fees if they wish to receive paper statements or transaction histories, and in some cases, financial institutions may charge consumers fees that exceed the cost to provide these statements.[815] 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 of the final rule's requirement to provide paper statements or account histories free of charge is likely de minimis. Since a financial institution may require that consumers provide E-Sign consent in order to receive a prepaid account, and thus provide statements or account histories electronically instead of following the periodic statement alternative, any revenue impact could be further mitigated.

Some commenters said that the requirement in the proposal to mail 18 months of transaction history upon request would impose a substantial burden on financial institutions. The commenter, mentioned above, which stated that it receives 750 requests per month for written transaction histories noted that the increase from 60 days to 18 months of transaction history is a 900 percent increase in the volume of history that would have to be provided. Another commenter estimated that extending the timeline to 18 months would increase the cost of mailing statements by three to four times. Additionally, some commenters explained that transaction data is generally moved to archived status after 12 months, and that once the data is archived, a financial institution may incur costs for retrieving information on a one-off basis in order to respond to consumers' requests for written histories.

[810] As a result of the final rule, financial institutions that do not provide consumers with 24 months of transaction history may incur additional costs in the future when migrating information across information technology platforms since additional data must be retained.

[811] In response to the Bureau's pre-proposal outreach, one program manager estimated that it would cost approximately $15,000 to modify its Web site to provide the summary total of fees as well as a summary of the total amount of deposits to the account and the total amount of all debits made to the prepaid account. This should be an upper bound on the estimated cost to this program manager of modifying its Web site to display only the required summary total of fees.

[812] 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. According to the program manager, 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 because it was operating at low scale it was consequently paying among the highest prices.

[813] 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 will be borne jointly by the processor and the financial institutions relying on the processor for hosting services.

[814] In pre-proposal outreach, one program manager told the Bureau 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.

[815] Estimates quoted to the Bureau by financial institutions 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. Financial institutions generally noted that postage is a large driver of this cost. One financial institution noted that, given the sensitivity associated with the information, such statements need to be sent via first class mail. Another financial institution that relied on its processor to provide ad hoc paper statements to consumers pays its processor $2 for each paper statement delivered.

The Bureau acknowledges that it may cost substantially more to provide a 24 month written transaction history than to provide a 60 day written transaction history. The Bureau notes, however, that the final rule further clarifies that a financial institution may send less than 24 months of written transaction history if the consumer requests a shorter timeframe. The Bureau anticipates that many consumers requesting written transaction histories will not need access to a full 24 months of transaction history and that therefore in many cases financial institutions will be able to send a significantly shorter transaction history. The Bureau also notes that, given the small fraction of consumers that request written transaction histories, the overall burden of the requirement to send written transaction histories is small, even if the cost of each mailing is substantially higher than it would be if sending a 60-day history.

If the final rule expands 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 final rule extends Regulation E's limited liability and error resolution regime to all prepaid accounts; provisional credit is also required for all prepaid accounts that have successfully completed the financial institution's customer identification and verification processes.[816] For prepaid accounts that have not been through the financial institution's customer identification and verification process, have not completed the process, have failed the process, or for which the financial institution has no such process for that particular prepaid program, the financial institution must comply with Regulation E's limited liability and error resolution regimes, but not with the provisional credit requirements. Under § 1005.6(a), a consumer may be held liable for an unauthorized EFT 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. In addition, § 1005.6(b) limits the amount of liability a consumer may assume.

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.[817] More specifically, after receiving notice that a consumer believes that an EFT 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.[818] Upon completion of the investigation, § 1005.11(c)(1) requires the financial institution to 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. In cases where the financial institution ultimately can establish that no error (or a different error) occurred, § 1005.11(d)(2) permits the financial institution to reverse the provisional credit. If the financial institution cannot establish that the transfer in question was authorized, the financial institution must credit the consumer's account (or finalize the provisional credit).

Prepaid accounts that are payroll card accounts, government benefit accounts, and those that receive Federal payments are currently 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, although some do so by contract. 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.[819] The Bureau's Study of Prepaid Account Agreements found that roughly 89 percent of all programs, and all of the largest GPR card programs, offered limited 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) appeared 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 financial institutions 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 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, apply regardless of what Regulation E requires.[820] 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

[816] 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 process. As described above, the FMS Rule requires that a prepaid card that receives a Federal payment comply with these provisions.

[817] *See* EFTA section 909(b).

[818] § 1005.11(c)(2). 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. § 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. § 1005.11(c)(2)(i)(A).

[819] 2014 CFSI Report at 12. 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. 2014 Pew Study at 20.

[820] *See, e.g.,* Network Branded Prepaid Card Ass'n, *Cardholder Protections—NBPCA Position, available at http://www.nbpca.org/en/Government-Affairs/Policy-Positions/Cardholder-Protections.aspx* (last visited Oct. 1, 2016).

beyond those articulated in the account agreement.

a. Benefits and Costs to Consumers

In general, the potential benefits to consumers arising from the final rule's requirements include reduced risk (relative to a baseline where some programs do not offer the protections of the final rule) 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 use them). Both groups will benefit from the reduced uncertainty regarding limited liability and error resolution protections that will result from the final rule.

Consumers using prepaid accounts will further benefit from any reduction in expected financial losses incurred due to unauthorized EFTs or other errors that will result from the final rule. Although financial institutions typically offer limited liability and error resolution protections in connection with prepaid accounts, the final rule will reduce consumer losses from unauthorized transfers in cases where such protections were not offered as well as ensure that errors are investigated expeditiously and that consumers regain access to funds more quickly. This potential benefit to consumers will depend on the following: (a) The number of consumers with prepaid accounts that do not currently follow the limited liability and error resolution regime, including access to provisional credit, that is described in the final rule; (b) the average magnitude of the financial losses consumers would experience from unauthorized transfers or other errors absent the final rule; and (c) the probability that these unauthorized transfers or other errors would occur absent the final rule. The Bureau notes that these benefits could be concentrated among certain segments of the population.[821]

In order to quantify the potential benefits to consumers from the final rule's requirements, the Bureau would need the quantities in (a), (b), and (c) or a database of representative market information that can be used to estimate these quantities. To the Bureau's knowledge, neither these quantities nor such a 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 final rule requires for prepaid accounts that have completed a financial institution's customer identification and verification process (and continues to require for all payroll card accounts and government benefit accounts). As described above, surveys suggest that between 8 and 16 percent of consumers have used a general purpose prepaid card in the past 12 months.[822] At present, Federal law does not require providers of these products to offer any of the limited liability and error resolution protections required by the final rule to consumers, except for those consumers with prepaid accounts that receive Federal payments (and therefore are covered by the FMS Rule), or are payroll cards or non-needs tested government benefit cards.

However, financial institutions offering prepaid accounts may (and often do) voluntarily offer these protections, in many cases because similar protections are required by payment card association network rules. As discussed above, the Bureau's Study of Prepaid Account Agreements found that the vast majority of programs reviewed followed Regulation E's limited liability protections. In addition, most prepaid programs appeared 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 provided error resolution protections, with provisional credit, consistent 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 offered error resolution with provisional credit and all offered limited liability protections. Most remaining programs offered 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 protections (including provisional credit) that are required by the final rule is small.[823] However, the final rule will provide consumers whose prepaid accounts 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 final rule removes the risk to consumers that these protections could be discontinued.

The Bureau has been unable to obtain data describing the average size of the financial losses consumers currently experience from unauthorized transfers or other errors that are covered by the final rule or the frequency with which these events occur. However, these quantities may be associated with certain observable factors. The average size of a transaction is likely correlated

[821] The Final Rule may also provide additional benefits to consumers. First, the 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 financial institutions that currently voluntarily offer the Final Rule's protections receive some benefit from the Final Rule's requirements since, absent the Final Rule, financial institutions currently offering these protections could change their terms and conditions and stop providing these protections in the future.

[822] 2014 FRB Consumers and Mobile Financial Services Survey at 48 tbl.C.8a. *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* 2013 FDIC Survey at 29–30 (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 Group, *Prepaid 2013: U.S. Consumers Buying More Cards For Own Use,* at 9 (Oct. 2013) (which reports that 7 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/2519B8BADB1B4388BAF11C511B3ACAE.ashx.* The definition of prepaid card in this survey appears to have included some products that would not be covered by the final rule's 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.

[823] One study which asserts that it covers programs accounting for 90 percent of active GPR cards in circulation found that all financial institutions offered liability and error resolution provisions consistent with those in Regulation E. 2014 CFSI Scorecard at 12 (Mar. 2014).

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.[824] 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 typical balances and transaction sizes of prepaid accounts are 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.[825] It found that 46 percent of GPR cards analyzed have periodic self-funded reloads and cumulative monthly purchases of $266.[826] The average lifespan of the cards that have periodic self-funded reloads was 256 days; the median, however, was only 60 days.[827] 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 had 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 GPR 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.[828]

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.[829] 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.[830] 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 GPR cards and one benefit of the final rule.

The Bureau believes that some consumers with prepaid accounts could receive important benefits in certain circumstances from the additional protections that are required by the final 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 10 percent each year from 2014 to 2018, and there appears to be sustained interest among consumers in using GPR cards as transaction accounts.[831] While the voluntary provision of limited liability and error resolution protections (including provisional credit) 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 financial institutions sustain increased losses from the requirement to extend Regulation E's limited liability and error resolution regime, including provisional credit, to all prepaid accounts, the final rule's limited liability and error resolution 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. The requirement to provide limited liability and error resolution protection for transactions taking place prior to customer identification and verification could also lead financial institutions to prevent prepaid accounts from being used until after such identification and verification or to limit accounts' functionality prior to identification and verification, reducing access for consumers who wish to use accounts before they have been registered or who are unable or unwilling to complete the identification and verification process.[832] Additionally, the final rule's requirements may result in decreased access to prepaid accounts for some consumers if financial institutions implement more rigorous screening requirements. That is, financial institutions may 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 costs to financial institutions arising from the final rule's requirements will depend on their current business practices, the number and types of errors that their consumers claim, and any potential future changes

[824] 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. 2012 FRB Kansas City 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.

[825] *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.

[826] *Id.* at 43 tbl.2.1, 59 tbl.4.9.

[827] *Id.* at 47 tbl.4.1.

[828] 2012 FRB Philadelphia Study at 67.

[829] GPR cards with periodic self-funded reloads average 5.7 purchases and 6.5 debits per month. GPR cards with occasional reloads average 2.0 purchases and 2.3 debits per month, and GPR cards with periodic non-government direct deposits have 18.1 purchases and 21 debits per month, on average. 2012 FRB Kansas City Study at 50 tbl.4.3, 59 tbl.4.9.

[830] *Id.* at 72 tbl.6.1.

[831] Mercator 12th Annual Market Forecasts at 12–13. The report addresses 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.

[832] Financial institutions may already limit account functionality before customer identification and verification in order to comply with existing Federal requirements to perform customer identification prior to establishing prepaid accounts with particular characteristics. The consumer impacts described would take place to the extent the final rule causes financial institutions to further restrict account functionality prior to consumer identification and verification.

that would affect the number and types of errors claimed, separate and apart from the final rule. Implementation of the final rule's requirements would be simplified by the fact that financial institutions offering prepaid accounts generally keep a central record of transactions and track authorized users.

The final rule requires that those 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 requirements or modify existing procedures (depending on their current practices). Specifically, financial institutions that do not currently offer these protections will 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.[833] If unable to complete their investigation within the required timeframe (generally 10 business days), financial institutions will be compelled to extend provisional credit (where applicable) and, in the case that a provisionally credited amount is subsequently reversed, notify the consumer.

For those financial institutions that do not currently offer limited liability and error resolution protections in the manner required by the final rule, the extension of these protections will require the establishment or modification of practices and procedures, as well as employee training. The establishment or modification of these practices and procedures will 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 will constitute an ongoing cost for financial institutions.[834] 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.[835] In pre-proposal outreach, the Bureau spoke with several financial institutions that 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.[836] Additionally, the amount of information provided by the consumer and the timeliness of the report can affect the duration of the investigation.[837] 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 is liable for an asserted error unless it can determine the error is not legitimate, a financial institution may incur a cost whether or not the error actually occurred. The Bureau therefore finds it more helpful to classify alleged errors as either accepted or denied, as explained below, when considering the various cases in which a financial institution may incur a cost.

Accepted disputes include situations in which the financial institution credits the consumer's account, either because an error occurred or, where an error did not occur, because an error was asserted and the financial institution could not establish that the transaction was authorized.[838] In the case of accepted disputes, financial institutions that do not currently offer limited liability and error resolution rights consistent with Regulation E will 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 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 EFT was authorized nor receive a credit from the merchant or ATM owner, financial institutions also will incur costs associated with paying funds to consumers.[839] While the Bureau does not have data that permit it to estimate the magnitude of such costs, the amount paid to consumers may be related to typical balances held in prepaid accounts, discussed above in the context of benefits to consumers.

Additionally, the final rule requires financial institutions to extend provisional credit to consumers asserting an error claim when the length of the investigation exceeds 10 business days, so long as the prepaid account has

[833] Financial institutions often rely on industry partners to perform some or all of these functions.

[834] It is possible that those institutions that currently offer Regulation E compliant error resolution on a voluntary basis will choose to rely on higher-skilled staff or perform additional reviews to assess compliance in light of the Final Rule. 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.*

[835] In addition, with the Final Rule's 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.

[836] 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.*

[837] 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.

[838] 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.*

[839] In pre-proposal outreach, the Bureau spoke with several financial institutions 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 of all claims paid by the program manager.

been through the customer identification and verification processes. In cases where the claim is ultimately accepted, 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, denied disputes occur when the financial institution is able to establish that a transfer was authorized and, therefore, the institution is not ultimately required to return funds to the consumer. In the case of denied disputes, financial institutions that do not currently offer error resolution rights will incur costs associated with conducting investigations, and financial institutions that do not currently offer provisional credit will incur costs associated with crediting accounts when the length of the investigation exceeds 10 business days. Although a financial institution extending provisional credit can subsequently reverse the credit when it is 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.[840] In such cases, extending provisional credit results in the financial institution losing all or some of the funds that were extended. For provisional credit that can be reclaimed, the financial institution will 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 opportunity cost generally will be negligible.

The Bureau believes that, to a certain extent, financial institutions are able to limit losses associated with error claims. In pre-proposal discussions with financial institutions that provide prepaid accounts, 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.[841] Financial institutions can limit account access prior to customer identification and verification and use information provided in the identification and verification process to help limit the risk of fraud. 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. The limited liability and error resolution protections required by the final rule may encourage financial institutions to invest in more robust systems to prevent unauthorized transfers.

Several industry commenters said that the application of limited liability and error resolution provisions, and in particular the provisional credit requirements, to prepaid accounts under certain circumstances could increase financial institutions' fraud losses associated with prepaid accounts. Some commenters claimed that fraud risk is especially high for transactions taking place before an account has been registered or in the period shortly after a prepaid account has been opened. One commenter that processes prepaid transactions estimated that providing limited liability and error resolution rights for transactions taking place before a prepaid account is registered would lead to an increase in fraud exposure of one additional basis point, compared to a baseline fraud exposure of between four and five basis points.

The Bureau acknowledges that extending limited liability and error resolution protections, including provisional credit, to prepaid accounts that do not already offer these protections prior to customer identification and verification could increase the fraud exposure of financial institutions. Partly in response to these concerns, the Bureau has determined not to require provisional credit for prepaid accounts that have not successfully completed the financial institution's customer identification and verification process. To the extent that financial institutions nonetheless face increased fraud risk because limited liability and error resolution requirements apply before customer identification and verification, the Bureau notes that financial institutions can limit this risk by restricting a prepaid account's functionality before the identification and verification process is complete. The Bureau understands that currently many prepaid accounts cannot be used prior to customer identification and verification, or are subject to restrictions on how they can be used or the amount of funds they can hold. To the extent that the requirement to provide limited liability and error resolution protections increases fraud exposure related to transactions prior to identification and verification or early in the account's history, such restrictions may permit financial institutions to reduce fraud exposure.

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 P2P transfer products—may help to facilitate wider adoption of these accounts and could benefit financial institutions. Additionally, since the costs associated with complying with the final rule vary across financial institutions, those that are already offering these protections may benefit if competitors need to raise prices or reduce the quality of their products to cover the costs associated with extending these protections to consumers. However, those financial institutions that currently offer these protections on a voluntary basis will lose the option of ceasing to offer such protections to consumers in the future.

4. Requiring the Posting and Provision of Prepaid Account Agreements

Section 1005.19 of the final rule requires issuers to submit agreements governing prepaid accounts that they

[840] 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 EFT was authorized.

[841] All U.S. Visa prepaid issuing financial institutions and their program managers have been required to report into Visa's Prepaid Clearinghouse Service since June 2015. *See* Press Release, Visa Inc., *Visa Prepaid Clearinghouse Service Creates Centralized Database to Better Detect and Prevent Fraud Schemes on Prepaid Cards* (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.

offer to the Bureau on a rolling basis. The Bureau intends to post these agreements on a publicly available Web site established and maintained by the Bureau in the future.[842] Issuers are not required to submit agreements to the Bureau if they qualify for one of two exceptions: (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;[843] and (2) a product testing exception for those prepaid accounts offered to a limited group of consumers and otherwise meeting the requirements specified in § 1005.19(b)(5). Under § 1005.19(c), issuers also must post and maintain on their publicly available Web site any prepaid account agreements that the issuer offers to the general public (unless the issuer qualifies for the de minimis or product testing exceptions); this requirement does not apply to accounts, such as payroll card accounts or government benefit accounts, that are not offered to the general public.

In addition to these requirements, § 1009.19(d) requires that issuers provide access to individual account agreements to any consumer holding an open prepaid account, unless such agreements are required to be posted on the issuer's Web site pursuant to § 1005.19(c). An issuer may 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.[844]

a. Benefits and Costs to Consumers

The final rule will 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 online access to account agreements (both on the Bureau's Web site and on the issuer's Web site) will enable suitably motivated consumers to more easily compare the fees, as well as other terms and conditions, of various prepaid account products. Entities may use the information in the repository to develop more competitive products or extract information that they could sell or otherwise provide to consumers or third parties, for example in the form of tools that consumer can use to compare the terms of different prepaid accounts. As discussed in more detail above with respect to the final rule's pre-acquisition disclosure requirements, consumers benefit from having more information about available products and their terms because it helps them to make better choices and because it can lead to additional competition in the market for prepaid accounts. Increased competition could benefit consumers through lower prices, higher quality products, or both.

For those consumers who have already acquired a prepaid account, access to their own account's terms and conditions, regardless of whether the 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,[845] 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 rolling basis. Provision of agreements to the Bureau will facilitate the Bureau's market monitoring, helping to ensure that prepaid accounts comply with regulatory requirements. Knowing that agreements must be provided to the Bureau and posted on the issuer's Web site could serve as an impetus for prepaid account issuers to ensure that they are complying with applicable regulatory requirements because public posting will make it more likely that agreement terms or disclosures that do not comply with such requirements are discovered.

b. Benefits and Costs to Covered Persons

Under the final rule, issuers of prepaid accounts offered to the public that do not qualify for the de minimis or testing exceptions will be required to establish procedures that ensure they provide agreements to the Bureau when required by the final rule and notify the Bureau when they withdraw an agreement. In addition, issuers will need to ensure that any submission includes the elements described in § 1005.19(b)(1). The Bureau expects that the burden imposed by this reporting requirement will be minimal, as issuers are required to maintain current account agreements for other purposes.

In addition, issuers of prepaid accounts that are offered to the public are also 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 final rule requires 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 will need to ensure that their Web sites include current agreements. The Bureau anticipates that some issuers will incur costs to make required agreements publicly available on their Web sites.

The final rule also requires that all issuers provide consumers with access to the agreement for their own prepaid account, unless such agreements are required to be posted on the issuer's Web site pursuant to § 1005.19(c). For those issuers choosing to comply with this requirement by posting the relevant agreements online, the issuer must ensure that its Web site includes all agreements for open accounts and ensure that the agreements posted online are 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 will 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 may also incur implementation costs associated with training customer service agents to handle such requests and/or changing existing IVR menu options.

Greater availability of information about the terms of available prepaid accounts could increase competition by making it easier for consumers to

[842] Only those agreements offered 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 must be submitted. § 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. § 1005.19 (b)(1)(iv).

[843] § 1005.19(b)(4).

[844] If the issuer chooses to comply with this requirement by providing a copy of the agreement in response to a consumer request, the issuer must provide the consumer with the ability to request a copy of the agreement by calling a readily available telephone line. The issuer is 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.

[845] *See, e.g.,* 2012 FRB Kansas City Study at 47 chart 4.1 (finding mean life spans of multiple years for some categories of prepaid accounts).

compare account costs and features across different prepaid accounts. This reduction in consumer search costs could result in lower prices, which could reduce profits for issuers of prepaid accounts.

The proposed rule would have required agreements for all prepaid accounts that do not qualify for the product testing exception, including payroll card accounts and other accounts not offered to the general public, to be posted to the issuer's publicly available Web site. Several commenters noted that issuers of payroll card accounts in particular may have different account agreements for potentially thousands of different employers, and that the burden of maintaining a public Web site making such a large number of agreements available could be especially high. Because the final rule does not require issuers to post publicly available versions of agreements for prepaid accounts that are not offered to the general public, issuers will not bear the burden of making such agreements available on their Web sites, while consumers will still have access to their own agreements pursuant to § 1009.19(d), and such agreements will be available to the public through the Bureau's future Web site.

5. Requirements Applicable to Covered Separate Credit Features

The final rule provides new protections for consumers with respect to certain overdraft credit features offered in connection with prepaid accounts. As described in greater detail above, in the final rule, the Bureau generally intends to cover under Regulation Z overdraft credit features offered in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliate, or its business partner (except as described in new § 1026.61(a)(4)). New § 1026.61(b) generally requires that such overdraft credit features be structured as separate sub-accounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. Under final § 1026.2(a)(15)(i), a prepaid card is a credit card under Regulation Z when it is a ''hybrid prepaid-credit card.'' New § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. A ''covered separate credit feature'' is defined in new § 1026.61(a)(2) to mean a separate credit feature accessible by a hybrid prepaid-credit card.

Certain provisions in Regulation Z apply to ''creditors'' and other provisions apply to ''card issuers.'' Under the final rule, a person that offers a covered separate credit feature accessible by a hybrid prepaid-credit card is both a ''card issuer'' and a ''creditor'' under Regulation Z. As discussed in the section-by-section analysis of § 1026.2(a)(20) above, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of ''open-end credit'' and that credit will not be home-secured. A card issuer of a hybrid prepaid-credit card that extends open-end credit (and thus charges a finance charge for the credit) that is not home-secured in connection with the covered separate credit feature is a ''creditor'' for purposes of the rules governing open-end (not home-secured) credit plans in subpart B in connection with the covered separate credit feature. The card issuer also must comply with the credit card rules set forth in subparts B and G with respect to the covered separate credit feature and the hybrid prepaid-credit card.[846] In addition, the final rule includes modifications to Regulation E that provide new consumer protections for prepaid accounts accessible by a hybrid prepaid-credit card. These changes subject providers to a number of new requirements, which are summarized below.

The final rule excludes prepaid cards from coverage as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card when it accesses a ''non-covered separate credit feature.'' A non-covered separate credit feature is a separate credit feature that either: (1) Cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Although prepaid cards that access non-covered separate credit features are not considered hybrid prepaid-credit cards, the non-covered separate credit feature is often subject to Regulation Z in its own right, depending on its terms and conditions. Second, under new § 1026.61(a)(4), a prepaid card also is not a credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees. Under the final rule, this incidental credit is generally subject to Regulation E, instead of Regulation Z.

By generally classifying prepaid cards that access covered separate credit features as credit cards, the final rule makes existing credit card provisions in Regulation Z that restrict the structure and types of fees that providers may impose applicable to covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans. As discussed above, the Bureau anticipates that most covered separate credit features will meet the definition of ''open-end credit'' and these credit plans will not be home-secured. Accordingly, the provisions applicable to open-end consumer credit plans are of particular importance in considering the potential impacts of the final rule. For example, existing Regulation Z § 1026.52(a) generally prohibits card issuers from imposing fees in excess of 25 percent of the credit limit during the first year following the opening of a credit card account under an open-end (not home-secured) consumer credit plan. Under the final rule, this restriction applies to credit-related fees assessed in connection with covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans. In addition, § 1026.52(b) limits penalty fees, and § 1026.56 prohibits over-the-limit fees unless the consumer consents by opting-in to such fees, with respect to covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans.

The final rule also modifies Regulation E to specify in § 1005.18(g)(1) that a financial institution generally must provide to any prepaid account without a covered separate credit feature the same account terms, conditions, and features that it provides on prepaid accounts in the same prepaid account program that have

[846] As discussed in more detail above in the section-by-section analysis of § 1026.2(a)(17), a person who offers a covered separate credit feature accessible by a hybrid prepaid-credit card and does not impose a finance charge is not offering open-end credit. Nonetheless, as discussed in the section-by-section analysis of § 1026.2(a)(17), such a person would still be subject to certain Regulation Z requirements under certain circumstances.

such a credit feature. The final rule permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card relative to the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. However, § 1005.18(g)(1) prohibits a financial institution from charging a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card relative to the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature.

In addition to these restrictions on fee structure and type, certain newly applicable provisions of Regulations E and Z restrict how a financial institution may obtain repayment of a balance incurred on a covered separate credit feature accessible by a hybrid prepaid-credit card. The final rule, in § 1005.10(e)(1), applies the EFTA compulsory use prohibition to covered separate credit features accessible by a hybrid prepaid-credit card. Accordingly, creditors are prohibited from requiring the electronic repayment of credit extended through a covered separate credit feature accessible by a hybrid prepaid-credit card on a preauthorized, recurring basis.[847] In particular, creditors are required to offer prepaid account consumers an alternative to the automatic repayment of credit balances, such as a consumer-initiated transfer of funds from an asset account to the credit account. While consumers may voluntarily agree to an automatic repayment plan for their convenience, such voluntary plans are subject to certain restrictions.

In particular, the final rule's provisions ensure a minimum period of time between when a debt is incurred and when the debt is due to be repaid for covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans. Specifically, with regard to such plans, the final rule requires card issuers to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the fixed monthly payment due date.[848] In addition to requiring card issuers to obtain the consumer's written, signed agreement to any automatic repayment with respect to a deposit account held with the card issuer, Regulation Z § 1026.12(d) prevents card issuers from deducting a payment more frequently than once per calendar month under any such automatic repayment plan.

Pursuant to Regulation Z as amended by the final rule, card issuers offering hybrid prepaid-credit cards must comply with a number of requirements governing solicitation and application. During the 30 days following prepaid account registration, § 1026.61(c) prohibits a card issuer from opening a covered separate credit feature accessible by a hybrid prepaid-credit card, providing a solicitation or application to open such a credit feature, or allowing an existing credit feature to become a covered separate credit feature accessible by a hybrid prepaid-credit card. Currently, § 1026.12(a)(1) prohibits unsolicited issuance of credit cards. Under the final rule, § 1026.12(a)(1) applies to hybrid prepaid-credit cards, and a card issuer may only attach a covered separate credit feature to a prepaid card in response to an oral or written request or application for the card. Any credit card applications or solicitations offered to consumers for a covered separate credit feature must comply with the requirements specified in § 1026.60. In evaluating an application, a card issuer is required by current § 1026.51(a) to establish and maintain reasonable written policies and procedures to consider the consumer's income or assets and current obligations in evaluating the consumer's ability to make the required minimum periodic payments under the terms of the plan. The final rule applies this ability to pay requirement to covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans.

Current Regulation Z also includes a number of additional disclosure requirements that the final rule applies to covered separate credit features accessible by a hybrid prepaid-credit card. Before the consumer makes a transaction using a covered separate credit feature accessible by a hybrid prepaid-credit card, creditors are required to provide the account-opening disclosures required by § 1026.6(b). Moreover, the final rule requires creditors to comply with § 1026.7 and provide a periodic statement for each billing cycle in which the account has a debit or credit balance of more than $1 or in which a finance charge has been imposed. This periodic statement requirement supplements the prepaid account periodic statement that is required by Regulation E.[849] In addition, creditors generally are obligated to provide the disclosures described in § 1026.9(c)(2) when changing the terms of the covered separate credit feature.

Because of statutory differences, transactions performed using a covered separate credit feature accessible by a hybrid prepaid-credit card may, in some circumstances, be afforded liability and error resolution protections that exceed those applicable to transactions exclusively involving funds drawn from the prepaid asset account. For those credit card transactions subject to Regulation Z's liability limitations, current § 1026.12(b) restricts cardholder liability to $50 in the event of unauthorized use. By contrast, Regulation E, in current § 1005.6(b), permits a financial institution to hold a consumer liable in the event of unauthorized use for up to $500 if the consumer does not report the loss in a timely manner.[850] In addition, current Regulation Z's definition of billing 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. *Compare* § 1026.13(a), *with* § 1005.11(a).

Because Regulation Z and Regulation E provide for different liability limitations and error resolution procedures, the final rule specifies in Regulation E § 1026.12(a)(1)(iv)(B) and Regulation Z § 1026.13(i)(2) which limitations and error resolution procedures apply to transactions made with a hybrid prepaid-credit card.[851] For those transactions that exclusively draw on a covered separate credit

[847] However, a creditor may offer an incentive to consumers for agreeing to repayment by preauthorized, recurring EFTs.

[848] See the section-by-section analyses of §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) above.

[849] Instead of providing a prepaid account periodic statement as required under Regulation E, final Regulation E § 1005.18(c) provides that a financial institution is not required to provide periodic statements if it makes available to the consumer balance information by telephone, 12 months of electronic account transaction history, and upon the consumer's request, 24 months of written account transaction history. As mentioned above, § 1026.5(b)(2) specifies that for credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the fixed monthly payment due date.

[850] Irrespective of whether a transaction is subject to a liability limitation specified by Regulation E or Z, payment card networks' ''zero liability'' policies may further limit consumers' liability for unauthorized transactions.

[851] See also existing Regulation Z § 1026.12(g), which cross-references Regulation E § 1005.12(a), for guidance on whether Regulation Z or Regulation E applies regarding issuance and liability for unauthorized use, in instances involving both credit and EFT aspects.

feature, the final rule specifies that Regulation Z's liability limitations and error resolution procedures apply. For those transactions that solely debit a prepaid asset account and do not draw on a covered separate credit feature, the final rule specifies that Regulation E's liability limitations and error resolution procedures apply. Finally, for those transactions that both debit a prepaid asset account and draw on a covered separate credit feature, Regulation E's liability limitations and error resolution procedures generally apply, with the exception of the error resolution provisions of § 1026.13(d) and (g) of Regulation Z, which apply to the credit portion of the transaction.

The baseline for the Bureau's consideration of the benefits, costs, and impacts arising from the final rule is the current market for prepaid accounts. However, to inform the rulemaking, the Bureau also considers the potential future impacts of the final rule by comparing the likely future development of the market for these products to how the market might have evolved in the absence of the final rule. Consistent with the baseline used for discussion of the other final rule provisions, this baseline incorporates both the existing regulatory structure and economic attributes of the relevant market. Most notably, this baseline includes underlying consumer preferences and the current set of incumbent firms and potential entrants.

Although a number of financial institutions offer prepaid accounts to consumers, the vast majority do not currently offer overdraft services in connection with these accounts and thus their current products are not directly impacted by the various credit provisions of the final rule.[852] However, one of the largest prepaid account program managers offers an overdraft service in connection with its prepaid accounts, which include both GPR cards and payroll card accounts. The Bureau's understanding is that the credit limits extended to consumers using these overdraft services are typically smaller than credit limits offered by credit card accounts, and consumers typically pay a per transaction fee, which does not vary with the size of the overdraft, to use the feature.[853] The Bureau understands that providers voluntarily choose to limit the number of fees that a consumer may incur during a specified period, and providers may waive fees for consumers who repay the overdraft within 24 hours or who overdraft by a de minimis amount. Further, the Bureau understands that providers require consumers to opt-in to the service and only offer the service to consumers who meet certain eligibility criteria.

Financial institutions currently offering prepaid accounts subject to a negative balance fee that wish to continue to charge such fees will need to restructure these accounts to comply with the final rule's credit provisions. There is little evidence regarding how common such fees are in practice. In the Study of Prepaid Account Agreements conducted in connection with the proposed rule, the Bureau found that roughly 7 percent of reviewed agreements noted a negative balance fee in their terms and conditions.[854] In response to the proposal, one credit union league commenter stated that 91 percent of member credit union survey respondents stated that they do not charge a sustained negative balance fee. One office of a State Attorney General commented that one-third of 38 employers it surveyed used payroll card programs that included overdraft or negative balance fees, though it is unclear how many distinct prepaid account providers this figure represents. Rather than trigger coverage under the final rule's credit provisions, the Bureau believes that most financial institutions that currently reserve the right to impose negative balance fees will no longer do so.

Although there are few prepaid providers currently offering overdraft services, the final rule's restrictions will affect a significant portion of the fee-based revenue generated by those prepaid programs offering overdraft. According to the office of a State Attorney General, overdraft fees and declined balance fees may comprise a substantial portion of the fee-based revenue for financial institutions offering payroll card programs, stating that, in its survey of 38 employers' payroll card programs, overdraft fees comprised over 40 percent of the fees assessed by those vendors that charge them.

Consumers regularly using overdraft services offered in connection with prepaid accounts represent only a small minority of all prepaid account consumers. The Bureau understands that the small number of prepaid account providers that currently offer overdraft services condition consumer eligibility on receipt of a regularly occurring direct deposit exceeding a predetermined threshold. Additionally, consumers must affirmatively choose to activate, or opt-in to, the service. Therefore, only those consumers who both meet the eligibility requirements and affirmatively choose to use the service are able to overdraft. A reasonable estimate of current market activity suggests that less than 1 percent of prepaid accountholders regularly use overdraft features offered in connection with their prepaid accounts.[855] Thus, the benefits, costs, and impacts arising from the final rule's overdraft credit provisions will have a limited effect on prepaid account consumers generally, as described more fully below, even though those consumers currently relying on overdraft services may be affected by changed product features, altered eligibility requirements, or loss of access.[856]

[852] One source suggests that government benefit card program revenue from overdraft fees ''virtually disappeared'' in 2014. 2015 FRB Government Prepaid Cards Report at 1. In 2015, overdraft fees accounted for less than 0.1 percent of total cardholder fee revenue for government benefit card programs. 2016 FRB Government Prepaid Cards Report at 8.

[853] *See, e.g.,* 2012 NetSpend WSJ Article.

[854] Study of Prepaid Account Agreements at 25–26. This percentage excludes those agreements designated as offering opt-in overdraft services (24 of 325 reviewed agreements). Including those agreements with formal opt-in overdraft services, roughly 10 percent noted a negative balance fee. *Id.* at 26.

[855] Although NetSpend is a significant prepaid account program manager and offers overdraft services in connection with some of its GPR and payroll card products, a news article reported that only 6 percent of NetSpend's customers regularly use overdraft. 2012 NetSpend WSJ Article. In addition, a larger percentage of accounts would potentially be eligible for their overdraft program. A financial filing suggested that NetSpend had 3.6 million active cards as of Sept. 30, 2015, and 49 percent of those active cards had direct deposit. Total Sys. Serv., Inc., Quarterly Report (Form 10–Q), at 27, *available at http://www.sec.gov/Archives/edgar/data/721683/000119312515367677/d97203d10q.htm* (for the quarterly period ended Sept. 30, 2015).

Focusing attention only on GPR card and payroll card accounts, which excludes other prepaid account products and therefore underestimates the market size, one projection estimated that there would be 22.4 million active prepaid debit and payroll cards in the United States as of 2014. Aite Group LLC, *The Contenders: Prepaid Debit and Payroll Cards Reach Ubiquity,* at 13 fig.5 (Nov. 2012). Recent reports are largely consistent with this projection. One recent report estimated that there were 6.0 million active payroll cards as of 2014. Aite Group LLC, *Checkmate: U.S. Payroll Card Programs Trump Paper Checks,* at 8 fig.4 (Apr. 2015). A second recent study estimated that there were 16.1 million GPR cards in circulation. Bob Rohr, First Annapolis, *Chase Enhances Competitive Positioning of Liquid,* Navigator: Thought Leadership on the Global Payments Industry, at 5 fig.2 (Sept. 2015), *available at http://www.firstannapolis.com/wp-content/uploads/2015/09/September-2015_First-Annapolis-Navigator1.pdf.*

[856] For example, changes in pricing structure or other protections may make covered separate credit features accessible by a hybrid prepaid-credit card either more or less desirable to a consumer relative to current overdraft services offered in connection with prepaid accounts. It is also possible that changes in the profitability of offering this product could lead those few current providers to change business models and, in so doing, potentially impact both those consumers using covered

In response to the proposal, a few industry commenters stated that the Bureau's treatment of overdraft services as credit subject to Regulation Z did not appear to be supported by any data, and they cited a lack of Bureau complaint data regarding overdraft on prepaid cards. Because relatively few consumers use overdraft services in connection with their prepaid accounts, the Bureau does not consider the volume of complaints to be informative regarding the benefits and costs of the final rule's treatment of overdraft services as credit. Further, because prepaid account providers offer overdraft services to consumers in a relatively uniform manner, there is neither an accessible counterfactual nor a natural experiment available that would enable the Bureau to evaluate alternative credit regulatory regimes.

Industry commenters also suggested that the Bureau's consumer testing did not support the Bureau's approach to regulating overdraft credit features offered in connection with prepaid accounts, stating that the testing supported a disclosure-based approach. The Bureau notes that, while consumer testing may inform the composition of a disclosure, it was not designed to evaluate behavioral responses to alternative credit regulatory regimes and, in any event, cannot capture strategic responses by industry to new regulatory requirements.

a. Benefits and Costs to Consumers

The Bureau believes that the final rule's requirements concerning disclosures, liability limitations, and error resolution procedures for covered separate credit features accessible by a hybrid prepaid-credit card provide a number of consumer benefits, aligning with those conferred by Congress on credit card accountholders under TILA. In some cases, the final rule strengthens consumer protections relative to those protections offered by current industry practices. In other cases, the final rule codifies requirements that, though largely consistent with current practices, are not mandatory under Federal law.

The Bureau believes that the final rule's requirements concerning credit-related disclosures, liability limitations, and error resolution procedures will have a minimal impact on which consumers have access to covered separate credit features accessible by a hybrid prepaid-credit card and the amount of credit offered. Although the credit-related disclosures provided to consumers seeking to add a covered separate credit feature accessible by a hybrid prepaid-credit card may motivate some consumers to choose not to apply for such a feature, the incremental cost associated with producing and distributing such disclosures, considering that providers must give various other disclosures to consumers acquiring a prepaid account, is modest. In addition, providers may further mitigate costs by obtaining E-Sign consent from the consumer and delivering subsequent credit-related disclosures in electronic form. The credit limits that providers currently offer consumers in connection with overdraft services offered in connection with prepaid accounts already serve to limit liability, so the additional requirements with respect to error resolution and liability limitations for covered separate features accessible by a hybrid prepaid-credit card should not prompt providers to engage in additional screening behaviors. These costs should not meaningfully affect which consumers are given the option to add a covered separate credit feature or the cost of that credit.

In contrast, certain other credit-related provisions of the final rule, including provisions that restrict the type and structure of certain fees and the timing of repayment, will likely have a significant impact on which consumers have access to covered separate credit features accessible by a hybrid prepaid-credit card, the amount of credit offered, and the payment terms associated with the credit. As will be discussed below, these impacts likely will occur because providers choosing to offer covered separate credit features accessible by a hybrid prepaid-credit card likely will modify their current fee structures to comply with the rule. In addition, providers likely will change eligibility criteria for covered separate credit features accessible by a hybrid prepaid-credit card due to the increased credit risk resulting from the final rule's provisions addressing the timing of repayment.

The benefits, costs, and impacts arising from the final rule's credit-related provisions likely will vary with the consumer's current intensity and intentionality of use of overdraft services. As described above, most consumers do not currently use overdraft services in connection with their prepaid accounts. Consumers use prepaid accounts for varied reasons. Some consumers rely on these accounts to aid in controlling spending or to facilitate budgeting.[857] Such consumers are unlikely to choose to use covered separate credit features accessible by a hybrid prepaid-credit card. By contrast, consumers with different motivations for using prepaid accounts may desire access to covered separate credit features and may rely on such features provided they meet the program's eligibility requirements.[858]

Consumers who currently use prepaid accounts that offer overdraft services will experience the impacts of the final rule's credit-related provisions most directly. Some consumers who currently knowingly use overdraft services in connection with their prepaid accounts rely on such services only occasionally while others choose to rely on such services as a source of credit with regularity. The Bureau received extensive consumer comment in response to the proposed rule, including comments that were coordinated as part of a letter-writing campaign organized by a program manager that offers overdraft services in connection with some of its prepaid account products. These comments stated, among other things, that consumers benefit from having access to overdraft services to make emergency or otherwise unexpected purchases. Some consumer commenters stated that the overdraft services offered by their prepaid provider were cheaper and less risky than alternatives, such as payday loans. In addition to this intentional reliance on overdraft services as source of credit, eligible consumers who have opted-in to an overdraft service may also unintentionally overdraw their prepaid accounts if they do not monitor their prepaid account balances.[859]

The Bureau expects that the final rule's restrictions on certain fees potentially charged to covered separate credit features accessible by a hybrid prepaid-credit card will incentivize, and in some cases require, those providers offering covered separate credit features accessible by a hybrid prepaid-credit card to change their pricing structures.

separate credit features accessible by a hybrid prepaid-credit card as well as prepaid accountholders not using such features.

[857] 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 I at 5.

[858] These requirements generally include receipt of a regularly occurring direct deposit in excess of a specified threshold.

[859] Some providers currently mitigate this possibility by requiring overdraft users to sign up for text or email alerts or by other mechanisms, even though they are not required by Federal law to do so.

Most notably, the final rule subjects most fees charged during the first year following the opening of a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan, other than periodic interest rates, to a cap of 25 percent of the initial credit line.[860] Currently, consumers who rely on an overdraft service offered in connection with their prepaid account generally pay a per transaction fee, which does not vary with the size of the overdraft, to use the feature.[861] This is similar to the fee structure typically used for checking account overdraft products, and these fees can be high relative to the amount of credit extended. Therefore, the final rule's restriction on the amount of fees that may be collected in the first year will be a binding constraint on the card issuer for all but infrequent users of covered separate credit features accessible by a hybrid prepaid-credit card. Considering the current pricing structure of prepaid account programs that offer overdraft services, the final rule's requirement could translate directly into lower transaction-based fees, at least during the first year of the covered separate credit feature accessible by a hybrid prepaid-credit card, for consumers using such features.[862]

Because this provision restricts the level of certain fees and not others, it is likely that providers that currently offer overdraft services in connection with their prepaid accounts will change prepaid account pricing structures and raise fees not subject to the restriction (or create new fees).[863] Issuers of hybrid prepaid-credit cards could respond to the final rule's fee provisions by either raising fees charged in connection with the prepaid account that do not relate to the covered separate credit feature for all prepaid accountholders, assessing an application fee for the covered separate credit feature to those prepaid accountholders who apply for such credit, or shifting to a pricing structure based on a periodic interest rate.[864] However, each of these options is likely to decrease demand relative to the present for either prepaid accounts or covered separate credit features. The quantity of prepaid accounts demanded from providers that offer covered separate credit features accessible by a hybrid prepaid-credit card could decrease if these providers respond to the final rule's credit pricing restrictions by generally raising prepaid account fees that are unrelated to the covered separate credit feature.[865] Alternatively, if providers respond by imposing or raising an application fee, the number of consumers demanding credit could decrease. This could occur because an up-front application fee is more salient for consumers than the current add-on pricing model, which relies on back-end transaction-based fees, or because consumers are less likely to have available funds to pay a larger, up-front fee. Similarly, shifting to a pricing structure based on a periodic interest rate would require that card issuers disclose to consumers a comparatively large, and therefore potentially salient, interest rate (if current credit limits and repayment intervals are retained). It is also possible that providers may choose not to offer covered separate credit features accessible by a hybrid prepaid-credit card or to offer these products to a more select set of consumers, relative to the baseline.

Provider responses to the final rule's provisions may cause those consumers who use overdraft services infrequently to pay higher prices for the covered separate credit feature or to choose to use less credit. For example, if providers respond to the pricing restrictions by charging consumers a high application fee to access credit, those consumers who anticipate occasional use may choose not to apply for credit because they 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). This could benefit some consumers by preventing them from inadvertently accessing a credit feature (after having opted-in) and incurring the attendant fees. However, if an unanticipated need for funds were to arise, some of these consumers may need to adapt their household budgets in other ways, which may include relying on other credit sources that are potentially higher cost or less convenient.[866] If a consumer needs to rely on another credit source, managing a relationship with an additional financial services provider could also result in efficiency losses, and the consumer may find understanding a second provider's terms and conditions and tracking account balances and due dates more costly than relying on one provider for both the prepaid account and credit feature.

As noted above, some consumers who frequently use overdraft services may not have developed account management skills.[867] Other such consumers may accurately anticipate their use of overdraft services but still prefer to use overdraft because they perceive overdraft services to be their best available source of short-term credit. As described above, providers will not be able to maintain the current

[860] This cap already applies to credit card accounts under an open-end (not home-secured) consumer credit plan pursuant to the CARD Act.

[861] For example, consumers may pay $15 per overdrawn transaction to access a credit line of $100. *See, e.g.,* 2012 NetSpend WSJ Article. Although providers may limit the number of fees that a consumer may incur during a specified period or opt not to charge for overdrafts that cause an account to go negative by a de minimis amount, this choice is voluntary.

[862] It is possible that some providers could choose to issue a change-in-terms notice to consumers after the first year of the covered separate credit feature accessible by a hybrid prepaid-credit card and restore the present fee structure for consumers who have held their card for at least one year. However, the Bureau believes that such an approach is not likely to be adopted because: (1) A provider engaging in such a strategy risks losing non-overdraft related fee revenue, which may be substantial, should consumers respond to such a strategy by choosing a different product; and (2) a provider would potentially bear additional administrative costs associated with maintaining multiple fee structures within the same program. *See* Fumiko Hayashi & Emily Cuddy, *Recurrent Overdrafts: A Deliberate Decision by Some Prepaid Cardholders?,* at 32 tbl.4 (Fed. Reserve Bank of Kan. City, Working Paper No. RWP 14–08, 2015), *available at https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp14–08.pdf* (showing that non-overdraft related fees comprise well over half of fees collected from overdrafters on average for one provider).

[863] If providers are profit-maximizing firms, their current choice not to offer an alternative fee structure compliant with the final rule's provisions suggests that their profits would decrease under such an alternative fee arrangement given the present industry structure.

[864] Like an application fee, periodic interest would not be subject to the restriction.

[865] Because the terms and conditions for transactions accessing the prepaid account cannot vary based on whether the prepaid accountholder accepts a covered separate credit feature accessible by a hybrid prepaid-credit card, providers are unable to target an increased prepaid account fee solely on those prepaid accountholders who accept the credit feature. Therefore, providers likely will target fees that are positively correlated with a consumer's demand for the covered separate credit feature, such as an application fee, for potential increases. This follows because a prepaid accountholder who desires a covered separate credit feature is less likely to switch to a substitute product in response to a fee increase than a prepaid accountholder who does not desire a covered separate credit feature (and therefore has more available substitute prepaid products from which to choose).

[866] Consumers may not have the funds to pay an application fee at the point when they need credit.

The fees charged currently for overdraft services in connection with prepaid accounts, which generally range from $15 to $35 per transaction, are typically lower than checking account overdraft fees. According to data obtained from one research firm, the Bureau found that the median overdraft fee among the 33 institutions monitored by the research firm was $34 in 2012, and the median overdraft fee across nearly 800 smaller banks and credit unions was $30 in 2012. CFPB Overdraft White Paper at 52.

[867] According to one study, 41 percent of prepaid users (who currently or previously had a checking account) had either closed a checking account themselves or had an account closed by an institution because of overdraft or bounced check fees. 2014 Pew Survey at 8.

per transaction fee structure for those consumers who use the covered separate credit feature accessible by a hybrid prepaid-credit card more than occasionally in the first year following account opening (assuming that the credit limit remains unchanged).[868] Providers may respond to the final rule's fee restrictions by raising other prepaid account fees not related to the covered separate credit feature or by relying on an up-front fee, such as an application fee, or periodic interest rate. However, consumers may find the payment of an up-front fee or the disclosure of a periodic interest rate highly salient. Many prepaid accountholders may not be willing to pay a one-time application fee or periodic interest rate of the magnitude that providers would need to charge to rationalize offering the credit feature. Given this response, the profit generated from an up-front fee or a periodic interest rate may not be sufficient to rationalize offering a covered separate credit feature.

Consumers who currently use overdraft features frequently will pay lower fees to access covered separate credit features under the final rule to the extent that they are able to access such services and choose to do so despite a salient up-front fee.[869] Furthermore, those consumers choosing to obtain a covered separate credit feature accessible by a hybrid prepaid-credit card despite a high up-front fee will have increased incentive to utilize it once purchased because the marginal cost associated with accessing the credit will be lower than under the current per transaction pricing structure.

The final rule also likely will affect which prepaid account consumers are eligible for covered separate credit features accessible by a hybrid prepaid-credit card. The final rule requires that card issuers establish and maintain reasonable written policies and procedures for considering the consumer's ability to make required minimum payments in deciding whether to offer the consumer a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan. Furthermore, to attempt to mitigate the effects on profitability of the additional credit risk borne in complying with the final rule's credit-related provisions, it is likely that providers offering covered separate credit features accessible by a hybrid prepaid-credit card (or considering doing so) will alter the eligibility criteria. As a result, some consumers who are currently eligible (or would otherwise become eligible in the future) may lose (or not obtain) eligibility, and these consumers would either need to decrease consumption or rely upon alternative (and potentially higher cost) fund sources.

Other provisions of the final rule provide consumers with additional control over their funds by ensuring that there is a minimum period of time between when debts are incurred and when they are due to be repaid. The final rule requires that for covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans, card issuers adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the fixed monthly payment due date.[870] Therefore, card issuers may not require that debts be repaid immediately from the next deposit into the consumer's asset account. In addition, the Regulation Z prohibition on offsets gives consumers discretion to decide whether to use funds deposited into their prepaid accounts to pay off debts incurred in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card or for another use that they deem a higher priority. Although this no-offset provision increases the onus on the consumer to budget for the debt and to remember to pay it to avoid additional fees or other adverse effects, consumers would still have the option of setting up an automatic payment around the fixed monthly payment due date to avoid this result if the creditor chooses to offer this capability. Moreover, under the final rule, a card issuer may sweep funds only periodically (and no more than once per calendar month) from the prepaid asset account to repay a debt, so long as it has the consumer's written authorization to do so. This restriction on the frequency of sweeps and the required delay that results from the requirement relating to the timing of periodic statements allow consumers to benefit from additional control of their funds.

These restrictions on the ability of a card issuer to apply prepaid account funds to outstanding debts incurred through the use of the covered separate credit feature will increase the credit risk associated with offering covered separate credit features accessible by a hybrid prepaid-credit card and, all else equal, will decrease their profitability. To compensate for this risk, providers may respond by offering less credit to consumers, charging higher fees for credit extended, or increasing collections activity.[871] One industry commenter noted that the cost for consumers to access credit will increase if it becomes more difficult for creditors to recover debts and stated that providers may resort to the use of debt collectors if they are unable to exercise offset rights. The commenter predicted that the Bureau's proposal would increase the cost of borrowing, and consumers would be more likely to have delinquent accounts. The Bureau recognizes that the cost for some consumers to access this credit may increase, but the protections required by the final rule decrease the risk faced by consumers in using these features. Another industry commenter stated that a decision to remove or reduce an overdraft credit line could have an adverse impact on a consumer's credit score should creditors share consumer credit limits and utilization with reporting agencies. The Bureau's understanding is that providers do not currently share credit limits or utilization with reporting agencies for overdraft services, and the Bureau notes that if creditors were to decide to share consumer credit limits and utilization with reporting agencies, the impact on a consumer's credit score of such reporting may be positive as well as negative, depending on the consumer's utilization and payment behavior.

Other provisions of the final rule provide potential benefits to consumers. The final rule requires providers offering covered separate credit features accessible by a hybrid prepaid-credit card to adhere to certain requirements that restrict when they may offer these features to consumers. By temporally separating the option to add a covered separate credit feature from the choice to acquire a prepaid account, these restrictions provide the prepaid accountholder with additional transparency and ensure that the consumer has the opportunity to become informed and consider options

[868] As discussed above, consumers who opt-in to overdraft services generally pay a flat fee per overdraft. At present, there is generally no fee associated with opting-in to overdraft services offered in connection with a prepaid account.

[869] As described above, those consumers who are no longer able to access such services will potentially pay higher fees if they choose to rely on other types of consumer credit.

[870] See the section-by-section analyses of §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) above.

[871] The final rule limits the magnitude of certain fees charged in connection with covered separate credit features accessible by a hybrid prepaid-credit card so any change in fee levels must comply with these restrictions.

when applying for credit.[872] Periodic statements and other disclosures required by the final rule, as well as the requirement that the covered separate credit feature be structured as a separate account or sub-account, will aid transparency and better enable consumers to monitor their accounts. Consumers potentially will receive separate periodic statements for their prepaid account (or an electronic history of transactions for the prepaid account) and their covered separate credit feature accessible by a hybrid prepaid-credit card, though the two periodic statements may be combined if the combined statement meets the requirements of both Regulations E and Z. The periodic statement requirement ensures that consumers receive important information regarding transactions performed and fees incurred using their covered separate credit feature. Absent this requirement, creditors may choose not to disclose all such information pertaining to the covered separate credit feature. In addition, for statutory reasons, transactions solely accessing the covered separate credit feature are subject to stronger liability limitations and error resolution protections than those transactions that do not access the credit feature.[873] The Bureau anticipates that these particular requirements will have a modest incremental impact on consumer access to credit beyond the impacts arising from the other new provisions, as discussed above.

The Bureau also considered, among other options, extending the Regulation E overdraft opt-in regime, described in § 1005.17, to prepaid accounts. Industry commenters advocated this approach, as well as variations that included additional protections (such as a cap on the number of overdraft fees). One industry commenter noted that consumers may want optional overdraft services provided under Regulation E but may not want credit card services under Regulation Z. The commenter stated that consumers use overdraft services in a manner indicating conscientious use of the service and that a Regulation E disclosure and opt-in approach is sufficient to protect consumers who do not want overdraft services and to ensure that consumers who want overdraft services understand the terms of the service. Commenters also asserted that consumer confusion could result from treating prepaid overdraft services differently from deposit account overdraft services.[874] The Bureau believes that the disclosure requirements of the final rule, including the restrictions on the timing of solicitation and application for covered separate credit features, should mitigate potential consumer confusion and distinguish the prepaid card account from any optional covered separate credit feature that may subsequently be accessed using a hybrid prepaid-credit card.

The few financial institutions that currently provide overdraft services in connection with prepaid accounts generally act consistently with the Regulation E opt-in regime. However, the Bureau learned through comments that many additional financial institutions would offer overdraft services in connection with their prepaid accounts if it were to adopt a Regulation E opt-in approach. Relative to the approach taken in the final rule, the Regulation E opt-in approach could potentially result in more widespread consumer use of overdraft services in connection with prepaid accounts. This could result from additional entry by providers due to the resolution of the regulatory uncertainty that currently deters their entry and from increased marketing activities by both incumbents and entrants aimed at growing demand for overdraft services offered in connection with prepaid accounts. However, under a Regulation E opt-in approach, consumers using services that would be considered covered separate credit features accessible by a hybrid prepaid-credit card under the final rule would not enjoy the protections required by Regulation Z and other benefits, as discussed above.[875]

The Bureau believes that industry pricing could evolve to a structure that approximates the checking account overdraft pricing structure, which is heavily reliant on back-end pricing via overdraft fees, under a Regulation E opt-in approach.[876] This could result in some consumers potentially paying higher fees for overdraft services than they do at present (or than they would under the final rule), but it also could result in other consumers paying less for their prepaid accounts if growth in demand for overdraft services or competitive pressures prompt providers to adopt alternative fee schedules. Relative to the final rule, adopting a Regulation E opt-in approach could result in higher prices for overdraft services for consumers who can obtain these services because the final rule's restrictions on the pricing of covered separate credit features accessible by a hybrid prepaid-credit card would not apply.

In the proposed rule, the Bureau also considered an alternative variant of the Regulation Z approach that subjected a broader set of transactions to coverage, including incidental credit extended in the form of a negative balance on a prepaid account in most situations.[877] Under the proposal, all per transaction fees for credit transactions were finance charges, even if they were the same amount as the fee charged for transactions paid entirely with funds available in the prepaid account. The Bureau received extensive comment addressing the proposed rule's definition of finance charge. Commenters noted that a negative balance could result from force pay and other situations where the issuer does not authorize the transaction and explained that the proposed rule's definition of finance charge could consider prepaid cards to be credit cards if the financial institution charged per transaction fees for these overdrafts, even if the per transaction fee were the same as the per transaction fee charged to access prepaid account funds. Many industry commenters were concerned that because of the breadth of the fees that would be considered finance charges under the proposal, a prepaid account issuer either could not charge

[872] The final rule provides that card issuers must adhere to timing requirements regarding solicitation and application that generally prevent card issuers from doing any of the following within 30 days of prepaid account registration: (1) Opening a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) making a solicitation or providing an application for such a feature; or (3) allowing an existing credit feature to become such a covered separate credit feature accessible by a hybrid prepaid-credit card.

[873] Those transactions that access both the prepaid asset account and the covered separate credit feature generally are subject to Regulation E's liability limitations and error resolution procedures, as well as some of Regulation Z's error resolution procedures, described in existing § 1026.13(d) and (g).

[874] For example, one industry trade association commenter noted that subjecting overdraft services to Regulation Z could result in consumer confusion and that consumers may mistakenly purchase prepaid cards believing that they are credit cards.

[875] As discussed above, the Bureau is engaged in research and other activity in anticipation of a separate rulemaking regarding checking account overdraft products and practices. The Bureau expects that the rulemaking will consider whether additional regulatory protections are warranted for those products and practices.

[876] In a study of several large banks' checking account overdraft programs, the Bureau found that, for opted-in consumers, overdraft and NSF fees accounted for about 75 percent of their total checking account fees and averaged over $250 per year. CFPB, *Data Point: Checking Account Overdraft,* at 5 (July 2014), *available at http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf.*

[877] Under the proposal, Regulation Z did not apply when the prepaid card only accessed credit not subject to any finance charge, as defined in proposed § 1026.4, or any fee described in proposed § 1026.4(c), and any credit accessed was not payable by written agreement in more than four installments.

general transaction fees on the prepaid account or would have to waive certain fees on any transaction that happened to involve credit, as defined under the proposal, to avoid triggering the credit card rules. One industry commenter estimated that such transactions, which can occur in connection with gasoline purchases, hotel stays, and other common consumer transactions, account for 10 percent of all prepaid card transactions.

Commenters discussed burdens to both industry and consumers arising from the application of the proposed rule's credit provisions in these situations. Commenters stated that the proposed rule's approach would have the consequence of causing financial institutions issuing prepaid cards that do not have credit features to eliminate per transaction (''pay-as-you-go'') pricing plans and prepaid card use outside of the United States, impose stricter authorization rules, hold authorizations for longer periods than they do currently, or freeze cardholder funds, thereby inconveniencing consumers. Further, commenters argued that providers would need to implement new fee logic patterns, among other adjustments.

The final rule's approach to these issues mitigates these concerns. Under new § 1026.61(a)(4), a prepaid card is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the provider generally does not charge credit-related fees for the credit. This exception is intended to exempt three types of credit so long as the provider generally does not charge credit-related fees for the credit: (1) incidental credit related to ''force pay'' transactions; (2) a de minimis $10 payment cushion; and (3) a delayed load cushion where credit is extended while a load of funds from an asset account is pending. New § 1026.61(a)(4)(ii)(B) allows a provider to qualify for the exception in new § 1026.61(a)(4) even if it charges transaction fees on the asset feature of the prepaid account for overdrafts so long as the amount of the per transaction fee does not exceed the amount of the per transaction fee imposed for transactions conducted entirely with funds available in the asset feature of a prepaid account.

The final rule's approach of not subjecting incidental credit to the Regulation Z requirements will avoid the costs associated with subjecting products to coverage due to force pay transactions and delayed load situations. Further, the de minimis payment cushion exemption will encourage providers to extend small amounts of credit to consumers (at no additional cost) relative to the approach in the proposed rule. The Bureau believes that, in general, these provisions will benefit consumers and providers alike.

b. Benefits and Costs to Covered Persons

This discussion covers many of the same issues already addressed in the preceding section. The final rule introduces additional requirements for prepaid account providers that offer covered separate credit features accessible by a hybrid prepaid-credit card.[878] As discussed above, the Bureau's understanding is that few financial institutions currently offer prepaid accounts with overdraft services. By restricting how providers may offer overdraft services to prepaid accountholders, the final rule's provisions may limit the economic viability of some current business practices. Because overdraft services currently offered in the market do not conform to the final rule's requirements, providers offering covered separate credit features accessible by a hybrid prepaid-credit card will need to restructure existing programs if they wish to continue offering the product. The final rule's requirements could adversely affect the profitability of existing overdraft programs and may lead some current providers to discontinue offering such services.[879]

The Bureau also understands that other firms currently might be considering offering covered separate credit features accessible by a hybrid prepaid-credit card in the future. The final rule's requirements decrease the likelihood that such entry will occur. For example, the final rule's provision subjecting most fees charged during the first year (other than periodic interest rates) of the covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan to a cap of 25 percent of the initial credit line prevents providers from implementing certain pricing structures. These additional constraints likely will reduce the potential profitability of offering covered separate credit features accessible by a hybrid prepaid-credit card.

Several industry commenters stated that the additional costs imposed by the final rule's credit-related requirements will motivate those few prepaid account providers offering overdraft services to stop doing so or to offer it in a form that is more costly and less convenient to consumers. By contrast, one consumer advocate commenter suggested that by providing additional regulatory clarity, the final rule's provisions may lead more financial institutions offering prepaid accounts to choose to offer related credit features. While the Bureau recognizes that regulatory uncertainty has likely discouraged the widespread availability of related credit features, the Bureau considers it unlikely that greater regulatory clarity alone could offset the costs of the new regulatory requirements sufficiently so that more financial institutions would offer prepaid accounts with related credit features.

The final rule limits the types of fees that card issuers may charge during the first year after a consumer holder of a prepaid account opens a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan. Among other restrictions, the final rule subjects most fees charged during the first year of the covered separate credit feature (other than periodic interest rates) to a cap of 25 percent of the initial credit line. Given the pricing structure and size of the lines of credit offered in conjunction with current prepaid overdraft offerings, the Bureau believes the final rule's fee cap requirement generally will be binding for any consumer incurring more than one overdraft fee in the first year after the opening of the covered separate credit feature accessible by a hybrid prepaid-credit card.[880] Because this restriction could mean that some consumers pay fewer fees subject to the cap, providers will experience a reduction in revenues.

Providers may respond to this revenue reduction by adopting an alternative pricing structure that is less reliant on transaction-based fees to access covered separate credit features, but adoption of such an alternative

[878] These obligations fall on the financial institution, card issuer, or creditor depending on the provision. In some cases, the same entity may fulfill multiple roles.

[879] The final rule's additional restrictions constrain provider choice regarding fee schedules relative to the present and, at best, will have a neutral impact on profitability, all else equal.

[880] The Bureau believes that current transaction-based charges for overdrafts range from $15 to $35. Assuming a credit line of $100, the new restriction implies that the card issuer may collect, at most, one overdraft fee (or $25) in the first year of the covered separate credit feature accessible by a hybrid prepaid-credit card. It is possible that card issuers would be willing to extend larger credit lines to consumers than they do at present. However, issuers would incur more risk in doing so and likely would need to develop more robust underwriting procedures, both to ensure a sufficient return and to comply with Regulation Z's ability-to-pay requirement.

pricing structure is likely to result in decreased demand for covered separate credit features or prepaid accounts generally. For example, providers may choose to adopt a pricing structure that includes higher fees for non-credit related features of the prepaid account. However, adopting such a pricing strategy would potentially put these providers at a competitive disadvantage because it would mean raising the price of holding a prepaid account for any consumer relying on the non-credit related features targeted for the price increase, including consumers who do not use covered separate credit features accessible by a hybrid prepaid-credit card. In response to such a price increase, consumers not seeking a covered separate credit feature accessible by a hybrid prepaid-credit card may turn to prepaid accounts offered by other financial institutions.

Alternatively, providers may adopt a pricing structure in which a fee is collected during the application process prior to the opening of the covered separate credit feature (and thus is not subject to the cap), or they may choose to charge a periodic interest rate. However, when faced with the option of pre-paying for overdraft services, consumers may be less willing to incur up-front charges for the service than they are under the current per transaction pricing structure, which relies on back-end fees. In addition, consumers may find disclosure of the periodic interest rate to be a salient deterrent to opening a covered separate credit feature accessible by a hybrid prepaid-credit card, especially at rate that providers may need to charge to rationalize offering the feature. Regardless of the alternative fee schedule adopted, the small group of prepaid account providers that offer covered separate credit features accessible by a hybrid prepaid-credit card will earn lower profits than they do at present (all else equal).

Other provisions of the final rule also decrease the profitability of offering covered separate credit features accessible by a hybrid prepaid-credit card. The final rule restricts a creditor's ability to access assets held in a consumer's prepaid account, permitting creditors to sweep funds from the prepaid account only monthly to repay a debt incurred by an associated covered separate credit feature.[881] As noted by commenters, creditors that do not obtain the consumer's written consent to sweep funds will need to offer consumers an alternative means of repaying the balance, which could require updating current systems or adopting new systems. Commenters also noted that credit cards and prepaid cards rely on different payment processing systems, so changing to a Regulation Z compliant system would likely imply substantial implementation costs.[882]

Aside from these implementation costs, the final rule's restriction on sweeps raises the ongoing cost to creditors associated with offering these accounts by increasing the risk of default.[883] In addition, the final rule's requirement that with respect to covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans, card issuers adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the fixed monthly payment due date ensures a time gap between when a debt is incurred and when it must be repaid. To manage this additional credit risk, card issuers may choose to offer less credit to consumers or to charge higher fees (or a periodic interest rate) for credit extended.

To comply with the final rule's provisions, the few prepaid providers that currently offer overdraft services will incur implementation costs associated with educating consumers about any product changes, developing new disclosures, and designing and executing new procedures. Industry commenters noted that credit card regulatory expertise may not currently exist in-house and that providers wishing to offer covered separate credit features accessible by a hybrid prepaid-credit card may need to acquire such expertise. In addition, one provider that currently offers overdraft services in connection with some of its prepaid products commented that modifying its business to apply Regulation Z would cause it to incur costs associated with developing a billing system and accepting alternative forms of payment, among other costs. Providers wishing to offer covered separate credit features accessible by a hybrid prepaid-credit card will need to ensure that any solicitation and application materials conform to Regulation Z's requirements. This may require providers to produce new disclosures or modify existing disclosures. Providers wishing to offer covered separate credit features accessible by a hybrid prepaid-credit card additionally are required to comply with the final rule's timing requirements with respect to the solicitation of consumer holders of prepaid accounts, application, and account opening.

Card issuers are also 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 covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan. As noted above, card issuers should incur minimal additional burden from these provisions because they can assess the consumer's ability-to-pay at low cost. Given providers' increased incentive to screen applicants due to their inability to sweep incoming funds immediately from the prepaid asset account to pay a debt incurred on the covered separate credit feature, the incremental impact of this provision on operational costs is minimal.[884]

Providers will also incur ongoing costs in adhering to other provisions of the final rule. These costs include those associated with providing periodic statements for covered separate credit features accessible by a hybrid prepaid-credit card as well as additional disclosures in certain circumstances, such as when certain account terms change. Specifically, providers will incur costs designing these disclosures and ensuring that they comply with Regulation Z. In some cases, providers will also incur costs associated with printing and distributing these disclosures.[885] Finally, to the extent that Regulation Z's liability limitations and error resolution provisions apply, providers may incur additional costs due to Regulation Z's more restrictive limitations on consumer liability and expanded definition of error. However, these costs should be minimal if credit lines do not increase relative to the present.

Because the final rule's provisions could affect consumer choice, the small number of prepaid providers that

[881] Creditors must obtain the consumer's consent to sweep funds. Because they may sweep funds only monthly, creditors will maintain debts on their books for a longer period, relative to the present where sweeps occur with the next incoming deposit, and will incur a small opportunity cost in connection with decreased access to funds so long as they do not charge consumers a periodic interest rate.

[882] One commenter estimated that most small financial institutions would incur a total approximate cost of $95,000 to implement the Regulation Z requirements. However, the basis for this estimate is unclear.

[883] Providers may pass on some of these increased costs to consumers by increasing prices for the prepaid account and the covered separate credit feature.

[884] If fewer consumers qualify for the product as a result of the final rule's requirement to assess the consumer's ability to make the required minimum payments, provider revenues could decrease.

[885] Providers could mitigate some of these costs by obtaining E-Sign consent from the consumer.

currently offer overdraft services may experience changes in the size or composition of the customer base seeking this product. Adjustments in aggregate market demand or consumer substitution to or from other providers within the market could affect these providers' profits. For example, if financial institutions currently offering prepaid accounts with overdraft services make their products less desirable to consumers who value credit by not offering covered separate credit features or by charging higher fees to hold prepaid accounts, those financial institutions offering prepaid accounts without covered separate credit features could benefit as consumers substitute away from products offering covered separate credit features.

In terms of alternatives, the Bureau also considered extending the Regulation E opt-in regime to prepaid accounts. Several industry commenters urged the Bureau to adopt a Regulation E opt-in approach, stating that it would provide consumers sufficient protection and would be less costly to implement than covering overdraft services under Regulation Z. Those few providers that currently offer overdraft services in connection with their prepaid accounts largely adhere to the Regulation E opt-in requirements, and therefore they would incur minimal additional costs in implementing such an approach, relative to the baseline of the current market. Based on comments received in response to the proposal, the Bureau believes that resolving the regulatory uncertainty that currently deters some providers from offering overdraft services by adopting a Regulation E opt-in approach would lead many more prepaid providers to offer overdraft services in connection with their prepaid accounts than offer such products currently. In addition, given the additional costs imposed by the Regulation Z approach relative to the Regulation E opt-in approach, more financial institutions offering prepaid accounts may have found it economically viable to offer overdraft services in the future under a Regulation E opt-in regime relative to the approach adopted by the final rule.

The Bureau also considered an alternative variant of the Regulation Z approach in the proposed rule that subjected a broader set of transactions to coverage, including those transactions accessing credit outside the course of a transaction; credit offered by parties unrelated to the prepaid account issuer, its affiliates, or its business partners; and credit extended as a negative balance on a prepaid account that would have been subject to a per transaction fee (even if the amount of the fee were the same as the amount charged for transactions paid entirely with funds available in the prepaid account). As discussed above, commenters suggested that this approach would impose a number of costs on industry, including: (1) potential compliance issues when the consumer attaches an unrelated credit feature to the prepaid account without the knowledge of the unrelated third-party creditor; and (2) interruptions to the flow of funds in contexts, such as force pay transactions, where an account balance may become negative and a transaction-related fee (that is the same as the fee charged for transactions paid entirely with funds available in the prepaid account) may be imposed, even though the prepaid account issuer does not authorize the credit extension.

The final rule's approach mitigates these concerns by excluding prepaid cards from coverage as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to ''non-covered separate credit features,'' which means that the separate credit feature either: (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. New § 1026.61(a)(4)(ii)(B) allows a provider to qualify for the exception in new § 1026.61(a)(4) even if it charges transaction fees on the asset feature of the prepaid account for overdrafts so long as the amount of the per transaction fee does not exceed the amount of the per transaction fee imposed for transactions conducted entirely with funds available in the asset feature of a prepaid account.

F. Potential Specific Impacts of the Final Rule

1. Depository Institutions and Credit Unions with $10 Billion or Less in Total Assets, as Described in Section 1026

The final rule's requirements apply uniformly across covered financial institutions without regard for their asset size.[886] Among those depository institutions and credit unions that the Bureau believes are directly affected by the final rule, roughly 67 percent have $10 billion or less in total assets.[887] The impact of the final rule on depository institutions and credit unions will depend on a number of factors, including: (1) whether the institution offers prepaid accounts; (2) the relative contribution of prepaid account earnings to overall firm profits; and (3) the cost of complying with the final rule (which depends on both present prepaid account offerings and the regulations to which those accounts are currently subject).

With respect to most provisions, the Bureau does not expect that the final rule will 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 covered separate credit features accessible by a hybrid prepaid-credit card. Issuers with consolidated assets of less than $10 billion are exempt from the Board's Regulation II restrictions on debit card interchange fees.[888] Additionally, for issuers with over $10 billion in assets, Regulation II's interchange fee restrictions do not apply to electronic debit transactions made using debit cards provided pursuant to certain government-administered payment programs or using certain reloadable, general-use prepaid cards.[889] However, these exemptions for issuers with over $10 billion in assets do not apply if a cardholder may incur a fee or charge for an overdraft[890] (unless the fee or charge is imposed for transferring funds from another asset account to cover a shortfall in the account accessible by the card).[891] Because they would be subject to Regulation II's restrictions on debit interchange fees if they offered overdraft services in connection with prepaid accounts, financial institutions with greater than $10 billion in assets presently have less incentive to offer overdraft services than

[886] 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.

[887] These figures reflect asset sizes reported as of December 2015 in the Federal Financial Institutions Examination Council 041 Call Report and the NCUA 5300 Call Report. Depository institutions and credit unions offering white label programs or programs through certain agent relationships were not included in arriving at this statistic.

[888] 12 CFR 235.5(a).

[889] 12 CFR 235.5(b) and (c).

[890] Here, an overdraft includes a shortage of funds or a transaction processed for an amount exceeding the account balance.

[891] 12 CFR 235.5(d)(1).

similarly situated depository institutions with less than $10 billion in assets. Therefore, the new consumer protections applicable to covered separate credit features accessible by a hybrid prepaid-credit card may be more likely to have an impact on those institutions with less than $10 billion in assets. One credit union commenter agreed with this conclusion but did not provide specific rationale for why the impact on those institutions with less than $10 billion in assets would differ from the impact on institutions with greater than $10 billion in assets.

2. Impact of the Final Rule's Provisions on Consumers in Rural Areas

Consumers in rural areas may derive benefits from the final 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.[892] The Bureau is not aware of evidence that states whether consumers in rural areas are more likely to acquire prepaid accounts, to use prepaid accounts that do not currently follow Regulation E's limited liability and error resolution regime, or to use covered separate credit features accessible by a hybrid prepaid-credit card.[893]

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[894] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[895] requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[896] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration (SBA) pursuant to the Small Business Act.[897]

The 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.[898] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.[899]

The undersigned certified that the proposed rule would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. In the proposed rule, the Bureau requested comment regarding its methodology for estimating burden on small entities as well as relevant data. The Bureau received little comment with respect to these issues. However, the Bureau addresses the comments received and integrates additional information provided by commenters into its analysis of these issues when available and informative. Upon considering relevant comments as well as the modifications to the proposed rule that were made in developing the final rule, the conclusion that the rule will not have a significant economic impact on a substantial number of small entities is unchanged. Therefore, a FRFA is not required.[900]

A. Overview of Analysis

The analysis below evaluates the economic impact of the final rule on directly affected small entities as defined by the RFA. The Bureau considers an entity to be ''directly affected'' by the final rule for RFA purposes if it issues prepaid accounts, manages a prepaid account program, or offers covered separate credit features accessible by a hybrid prepaid-credit card.[901] This analysis establishes that directly affected small banks and credit unions each represent a fraction of 1 percent of all small banks and credit unions. Further, the analysis also establishes that directly affected small or potentially small non-bank entities comprise roughly 4 percent of all small entities within the relevant North American Industry Classification System (NAICS) code.[902] These percentages do not comprise a substantial number of small entities for purposes of the RFA.

Further, this analysis also establishes that the only small non-bank entities likely to experience a significant economic impact from the final 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 products that would be considered covered separate credit features accessible by a hybrid prepaid-credit card.[903] The Bureau concludes that less than 1 percent of all small non-bank entities within the relevant NAICS code will experience a significant economic impact from the final rule. This does not comprise a significant economic impact on a substantial number of small entities for purposes of the RFA.

[892] 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.*

[893] One study found that consumers living in rural areas were more likely to deposit tax refunds onto a prepaid card than consumers living in urban areas. 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 and did not find a robust relationship between whether a household was in a metropolitan area and prepaid debit card use. 2013 FDIC Survey at 41.

[894] Public Law 96–354, 94 Stat. 1164 (1980).

[895] Public Law 104–21, section 241, 110 Stat. 847, 864–65 (1996).

[896] 5 U.S.C. 601–612. The term '''small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition after notice and comment].'' 5 U.S.C. 601(4). The term '''small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].'' 5 U.S.C. 601(5). Aside from credit unions, the Bureau does not believe that any small not-for-profit organizations are regulated by the final rule for RFA purposes. In its Study of Prepaid Account Agreements, the Bureau did not locate any small governmental jurisdictions regulated by the final rule for RFA purposes.

[897] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the SBA and providing an opportunity for public comment. *Id.*

[898] 5 U.S.C. 601 *et seq.*

[899] 5 U.S.C. 609.

[900] 5 U.S.C. 605(b).

[901] The final rule directly regulates financial institutions, card issuers, and creditors. In many cases, entities other than financial institutions perform program management functions. To inform the rulemaking, the Bureau additionally considers the impact of the final rule on such entities even though the final rule does not directly regulate these entities for RFA purposes.

[902] The North American Industry Classification System (NAICS) is the standard used by the SBA to match small business size standards to industries. For this analysis, the Bureau considers directly affected non-bank entities to fall within NAICS code 522320 (Financial transactions processing, reserve, and clearinghouse activities).

[903] A few commenters noted that the proposal's approach of limiting the exemption to the requirement to provide the long-form disclosure pre-acquisition to those retailers selling products from at least two different issuing financial institutions would potentially have a disproportionate impact on small retailers. The final rule mitigates this concern by broadening the type of entity that qualifies for the alternative timing regime. Further, such retailers are not ''directly affected'' by the final rule for RFA purposes, and even if they were, limiting the exemption would not cause these retailers to experience a significant economic impact.

B. Number and Classes of Directly Affected Entities

The provisions of the final rule apply to any account meeting the criteria described in § 1005.2(b)(3). Providers of these accounts include issuers and program managers. Prepaid account issuers are typically banks and credit unions, and program managers are typically non-banks.[904] Some issuers also act as the program manager for some or all of the prepaid accounts that they issue. While most of the final rule does not directly regulate prepaid program managers for RFA purposes if they are not financial institutions, the Bureau exercises its discretion to take a comprehensive approach that considers both prepaid account issuers and program managers in determining whether the final rule will have a significant economic impact on a substantial number of small entities.[905] Financial institutions, creditors, and card issuers must also comply with the final rule's requirements pertaining to credit.[906]

Because 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 in connection with the proposed rule.[907] Table 1 reports estimated counts of banks, credit unions, and non-bank entities identified by the Bureau as likely directly affected by the final rule. Table 1 also reports the total number of entities, as well as the total number of small or potentially small entities, within each relevant NAICS code to provide context for those counts.[908]

Banks and credit unions. Based on its Study of Prepaid Account Agreements, outreach to interested stakeholders and other regulatory agencies, review of industry studies, and consideration of comments received in response to the proposed rule, the Bureau has determined that the final rule will directly affect very few small banks or credit unions.

Several commenters to the proposed rule suggested that the Bureau undercounted the number of small banks or credit unions directly affected by the proposed rule's provisions. However, those commenters appeared to include banks or credit unions that offer prepaid cards through a vendor or bankers' bank in concluding that the Bureau undercounted the number of directly affected small banks or credit unions. As described in the proposed rule, the Bureau does not consider those entities directly affected by the final rule and therefore does not include such entities in its counts (to the extent that they could be identified).[909]

In such relationships, a distinct vendor or banker's bank generally handles most compliance duties. The Bureau considered such entities, which generally perform these duties on behalf of program participants, to be directly affected by the final rule for RFA purposes but did not include program participants (to the extent that they could be identified as such by the Bureau). Program participants that rely on white-label providers or other agent-based relationships generally include small banks or credit unions that offer prepaid products as a convenience to their customers. One trade association commenter stated that small banks participating in these programs may retain certain responsibilities, including retrieving and replacing disclosures and verifying vendor compliance. The Bureau believes that these costs would not comprise a significant economic impact for such entities. Further, the Bureau understands that prepaid accounts offered through these arrangements generally provide limited liability and error resolution protections and do not provide overdraft services. Therefore, the concern raised by commenters does not affect the Bureau's conclusion for RFA purposes because such entities would not experience a significant economic impact, as discussed below, even if they were included in the Bureau's counts.

A few industry commenters also suggested that the rule would affect entities that do not currently offer prepaid products but may wish to do so in the future. For purposes of the RFA, the Bureau uses the set of current market participants as the baseline and therefore considers the impact of the final rule only on entities that currently offer products that meet the final rule's criteria for a prepaid account.

For this analysis, the Bureau considered small those banks and credit unions averaging less than $550 million in assets across the institution's four quarterly Call Report entries for 2012.[910] As shown in Table 1, the Bureau identified 19 directly affected small or potentially small banks and six directly affected small credit unions.[911] These entities constitute less than 1 percent of small banks and credit unions. This fraction does not comprise a substantial number of small entities under the RFA. Because the number of directly affected small or potentially small banks and credit unions was so small, the Bureau did not evaluate whether the economic impact of the final rule on small banks and credit unions is significant.[912]

Non-bank entities. As described above, directly affected non-bank entities are primarily prepaid program managers but also include issuers of P2P payment products and other non-Visa or non-MasterCard branded prepaid products. For this analysis, the Bureau considered directly affected non-bank entities to fall within NAICS code 522320 (Financial transactions processing, reserve, and clearinghouse activities).[913] The SBA considers small

[904] P2P payment products and other non-Visa or non-MasterCard branded prepaid products are sometimes issued by non-bank entities.

[905] To determine 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 resulting from the final rule. In some cases, the same entity performs both the issuing and program management functions, and in other cases, different entities perform these functions.

[906] Currently, the non-bank program manager fulfills these roles for those prepaid products that offer overdraft services although the creditor may be an entity distinct from the program manager or issuer.

[907] This list was compiled using information gathered from the Bureau's review of publicly available information and industry outreach. 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 in its pre-proposal review of publicly available information even though account agreements for their prepaid programs were not located. The Bureau does not believe that modifications made to the proposed rule to arrive at the final rule will increase the number of directly affected entities and therefore retains the estimates of total entity counts obtained in connection with the proposed rule.

[908] Because 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 addition, one bank's size could not be classified because multiple banks shared the same name. Therefore, out of an abundance of caution, the Bureau considered any entity for which a size classification could not be made to be ''potentially small.''

[909] 79 FR 77102, 77284 n.536 (Dec. 23, 2014).

[910] The Bureau obtained similar classifications using assets reported in later year Call Reports. The SBA considers small those banks and credit unions with less than $550 million in assets. U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (Feb. 2016), *available at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[911] Using asset sizes for 2013 and 2014 to assign a size classification yielded 17 small or potentially small banks and five small credit unions. Using asset sizes for 2015 yielded 16 small or potentially small banks and five small credit unions.

[912] As discussed below, the Bureau found that there was not a significant economic impact on a substantial number of small non-bank entities, and the Bureau has no reason to believe that the impact would be meaningfully greater for banks and credit unions.

[913] According to the Census Bureau, NAICS code 522320 corresponds to ''establishments primarily

Continued

those non-bank entities within NAICS code 522320 with average annual receipts less than $38.5 million.[914] The Bureau used revenue estimates obtained by reviewing publicly available information as a proxy for receipts in evaluating the entity's size. The Bureau considered small those entities estimated to have less than $38.5 million in annual revenues.[915]

The Bureau identified 127 non-bank entities that the final rule will directly affect. The Bureau could classify the size of 44 such entities, and approximately 30 percent of these entities (13 entities) were classified as small. It is likely, however, that many of the remaining 83 non-bank entities that the Bureau was unable to classify are small as well. Therefore, the Bureau classified these entities as potentially small. Applying these classifications, 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 (4 percent).[916] This does not comprise a substantial number of small entities under the RFA. Nonetheless, the Bureau evaluated the impacts of the final rule's provisions on these entities to inform the rulemaking more fully.

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	2,465	2,325	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"), which relies on information from the 2012 Economic Census.

[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 (2012) using the percentage of entities within the reported NAICS code that were small according to reported receipts size.

[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 Provisions on Directly Affected Non-Bank Entities

The following discussion summarizes the economic impacts arising from the major provisions of the final rule on directly affected small non-bank entities. Most of the final rule does not directly regulate these entities for RFA purposes if they are not financial

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.'' U.S. Census Bureau, *2007 NAICS Definition, available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=522320&search=2007*. FinCEN relied on NAICS code 522320 in its Prepaid Access Rule. *See* 76 FR 45403, 45414 (July 29, 2011).

[914] U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (Feb. 2016), *available at http://www.sba.gov/sites/default/files/files/_Standards_Table.pdf.*

[915] When available, the Bureau used publicly available revenue estimates for 2012, which coincides with the most recent Economic Census. When revenue estimates from 2012 were not available, the Bureau used available information from recent years.

[916] In its Regulatory Flexibility Act analysis for its Prepaid Access Rulemaking, FinCEN relied on commercial database information (Dun and Bradstreet, D&B Duns Market Identifiers Plus (US)) and narrowed its count to those entities within NAICS code 522320 that perform either EFTs or electronic financial payment services. FinCEN estimated that 700 entities met 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. *See* 76 FR 45403, 45414–15 (July 29, 2011).

Currently, the SBA considers entities within NAICS code 522320 with less than $38.5 million in average annual receipts to be small. It follows that *at least* 651 entities meeting FinCEN's narrower classification would be considered small so long as the total number of entities meeting the narrower classification is unchanged. The Bureau concludes that under the narrower classification used by FinCEN, directly affected small or potentially small non-bank entities comprise, at most, 15 percent (96/651) of all small entities.

institutions.[917] However, prepaid account issuers may work with small non-bank entities (generally program managers) to comply with the final rule. Aside from the credit-related provisions and the extension of Regulation E's limited liability and error resolution regime, other than provisional credit requirements, to all prepaid accounts,[918] most provisions of the final rule will result in minimal burden for small non-bank entities. The Bureau discusses these impacts in detail below, using the current market as the baseline. In addition, the Bureau briefly discusses other provisions that potentially affect small non-bank entities.

1. Credit-Related Requirements

The final rule's provisions relating to credit could cause those entities that currently offer overdraft services in connection with prepaid accounts to experience a significant economic impact in complying with the final rule's requirements. These impacts are discussed in more detail in the section 1022(b)(2)(A) consideration of benefits, costs, and impacts above. However, the Bureau's understanding is that two small or potentially small non-bank entities, at most, offer products that would be considered covered separate credit features accessible by a hybrid prepaid-credit card.[919]

2. Limited Liability and Error Resolution Requirements

The final rule requires financial institutions offering prepaid accounts to comply with Regulation E's limited liability and error resolution regime, with some modification to the requirement to extend provisional credit. 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 authorized.[920] Specifically, after receiving notice that a consumer believes that an EFT was unauthorized, the financial institution must promptly perform an investigation to determine whether an error occurred. EFTA and Regulation E further state 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.[921] If the financial institution ultimately can establish that the transfer in question was not an error, it can reverse the provisional credit.

Under EFTA and Regulation E,[922] a consumer may be held liable for an unauthorized EFT 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 notice to the financial institution within two business days of learning of the loss or theft, the consumer's liability is the lesser of $50 or the amount of any unauthorized transfers made before giving notice. If notice is not given within two business days, 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.[923] If a consumer's periodic statement shows an unauthorized transfer, the consumer must notify the financial institution within 60 calendar days after the periodic statement was sent or face unlimited liability for all unauthorized transfers made after the 60-day period.

Current Regulation E applies to some prepaid products that are included in the final rule's definition of prepaid account—namely payroll card accounts and certain accounts used for distribution of government benefits.[924] Further, many financial institutions currently provide prepaid products, which are considered prepaid accounts under the final rule, that offer limited liability and error resolution protections even though the financial institution is not directly required to do so by Regulation E at present. There are many factors influencing current business practices with respect to these protections. First, as discussed in greater detail above, the FMS Rule extends Regulation E's payroll card account protections to prepaid cards that receive Federal payments. Because it may be difficult to distinguish prepaid accounts that receive Federal payments from those that do not receive such payments, financial institutions may choose to extend these protections to all prepaid accounts. Second, as discussed in more detail below, the Bureau's market research suggests that many financial institutions choose to provide these protections to consumers by contract as part of their customer service offerings. Finally, payment card network associations' rules require that financial institutions limit consumers' liability for unauthorized charges and remedy certain errors related to transactions that occur over their networks and may require that financial institutions extend provisional credit within a shorter timeframe than required by EFTA and Regulation E for losses from unauthorized card use.[925]

[917] With regard to the final rule's credit provisions, however, non-bank entities may be directly regulated if they are creditors or card issuers.

[918] The final rule only extends the Regulation E provisional credit requirements to prepaid accounts for which the financial institution has completed the customer identification and verification process. These protections are currently required for payroll card accounts and government benefit accounts. The exception for unverified accounts does not extend to payroll card accounts or government benefit accounts.

[919] In addition, those entities currently charging negative balance fees must restructure accounts to comply with the final rule's credit-related provisions if they wish to continue to charge these fees. As discussed above, the Bureau found in its Study of Prepaid Account Agreements that some prepaid programs may impose a fee if a prepaid account has a negative balance. Evaluated on a program level (and not an entity/provider level) and excluding those agreements for those programs designated as offering opt-in overdraft services, the Study found that roughly 7 percent of reviewed agreements noted such a fee in their terms and conditions. To avoid triggering coverage under the credit provisions of the final rule, the Bureau believes that most providers will choose not to impose negative balance fees.

There is little evidence regarding how common such fees are in practice. One credit union league commenter stated that 91 percent of member credit union survey respondents stated that they do not charge a sustained negative balance fee, but they did not clarify if survey respondents were addressing negative balance fees assessed on prepaid accounts in particular. Even if 9 percent of credit unions offering prepaid accounts charge such fees, there is not a substantial number of credit unions directly affected by this provision. Another commenter stated that one-third of 38 employers surveyed used payroll card vendors with programs that included overdraft or negative balance fees. However, it is unclear how many distinct program managers this data included because the study reported statistics in terms of employer respondents and not in terms of the number of entities offering payroll card programs

[920] EFTA section 909(b).

[921] The timeline is somewhat different for certain types of transactions and for new accounts.

[922] EFTA section 909; § 1005.6.

[923] 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.

[924] Under current Regulation E, covered government benefit programs do not need to provide periodic statements or online access to account information so long as they provide balance information to benefits recipients via telephone and electronic terminals and at least 60 days of written account history upon request. Needs-tested EBT programs established or administered under State or local law are exempt from Regulation E. § 1005.15(a).

[925] *See, e.g.,* Visa Inc., *Zero Liability, available at https://www.visa.com/chip/personal/security/zero-liability.jsp* (last visited Oct. 1, 2016); MasterCard Inc., *Zero Liability Protection, available at http://www.mastercard.us/zero-liability.html* (last visited Oct. 1, 2016).

Limited liability protections. The Bureau's market research conducted in connection with the proposed rule, including its Study of Prepaid Account Agreements, strongly suggested that the vast majority of directly affected small or potentially small non-bank entities extend some form of limited liability protections to consumers. Table 2 summarizes the Bureau's findings from its Study of Prepaid Account Agreements regarding industry practice with respect to limited liability. Of the 96 directly affected small or potentially small non-bank entities identified by the Bureau, 15 entities only offered payroll card accounts, to the Bureau's knowledge, and therefore were required to provide Regulation E's limited liability protections to consumers. The Bureau was able to locate an agreement for at least one prepaid account program for all but 14 of the remaining 81 entities.

In its Study of Prepaid Account Agreements, the Bureau examined the language in prepaid account agreements that addressed limitations on consumers' liability for unauthorized transfers to assess whether each program contractually provided the limited liability protections that Regulation E requires for covered accounts. For each entity with at least one available prepaid account agreement (and offering at least one non-payroll card program),[926] the Bureau classified the entity's limited liability protections as belonging to one of three categories: (1) Liability limitations consistent with Regulation E's requirements or better for all reviewed agreements; (2) some liability limitations but less than what is required by Regulation E; and (3) no limited liability protections.[927]

Table 2 reports the results of this review. 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 final rule provided protections at least as comprehensive as those required by Regulation E. The Bureau found that 4 percent of small or potentially small non-bank entities provided some liability limitations (but less than what Regulation E requires for at least one program). Six percent of small or potentially small non-bank entities had at least one agreement that did not mention any liability limitations.[928] 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 offered by directly affected small or potentially small non-bank entities with at least one available agreement (or which only offer payroll card accounts). Within this narrower group of entities, 88 percent (18 percent + 70 percent) provided liability limitations at least as comprehensive as Regulation E's requirements for all reviewed programs, and thus, will not need to change their practices to comply with the final rule. An additional 5 percent provided some liability limitations for at least one of their programs and thus will incur only a portion of the total burden arising from the final rule's requirement to extend Regulation E's limited liability protections.[929]

[926] The Bureau did not identify any directly affected small or potentially small non-bank entities that exclusively offered government benefit programs.

[927] The Bureau reviewed available prepaid account agreements, as described in its Study of Prepaid Account Agreements. In some instances, a small or potentially small non-bank entity offered multiple programs that appeared to provide different levels of limited liability protection. When a non-bank entity offered multiple programs with different levels of protection, the Bureau classified the entity according to the program providing the lowest level of protection for consumers. The Bureau classified error resolution policies similarly.

[928] One of these six entities also did not provide error resolution protections (see below).

[929] The Bureau repeated this analysis restricting attention to just those 13 non-bank entities that it could classify as small. Of these entities, 12 provided liability limitations consistent with Regulation E (or only offered payroll card accounts). The one remaining entity did not have an available account agreement.

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 performed in connection with the proposed rule, including its Study of Prepaid Account Agreements, strongly suggested that the majority of directly affected small or potentially small non-bank entities extended some form of error resolution protections to consumers. Table 3 summarizes the Study's findings regarding 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 its Study of Prepaid Account Agreements, the Bureau examined relevant language in prepaid account agreements addressing error resolution to assess whether each program contractually provided the same error resolution protections that Regulation E requires for covered accounts. For each small or potentially small non-bank entity with at least one available prepaid account agreement, the Bureau classified the entity's error resolution protections as belonging to one of four categories: (1) Full error resolution, consistent with Regulation E, 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.

Table 3 reports the results of that review. The Bureau determined that approximately 58 percent (16 percent + 42 percent) of all small or potentially small non-bank entities directly affected by the final rule provided full error resolution with provisional credit for all reviewed programs.[930] Therefore, over half of small or potentially small non-bank entities will not need to change their error resolution or provisional credit practices to comply with the final rule. Further, an additional 18 percent of entities provided error resolution protections but only offered provisional credit in limited circumstances. These non-bank entities will experience only a portion of the total increase in burden associated with the final rule's requirement that a financial institution extend provisional credit to all consumers whose prepaid accounts have been verified when an error is not resolved within a defined period. An additional 8 percent of entities offered error resolution to consumers but will potentially incur the entire increase in burden associated with extending provisional credit because they do not currently offer it. Only 2 percent of small or potentially small non-bank entities (two entities) provided no error resolution protections for at least one of

[930] The percentages cited in this paragraph may not add up to 100 percent due to rounding.

their prepaid programs and, therefore, will incur the entire burden associated with providing error resolution and provisional credit for at least one program.

The final column of Table 3 reports the relative frequency of the error resolution policies for those directly affected small or potentially small non-bank entities for which the Bureau could locate at least one program's agreement (or that only offer payroll card accounts). Within this group of directly affected entities, 67 percent (18 percent + 49 percent) provided full error resolution with provisional credit for all reviewed programs and thus will not need to change their policies. An additional 21 percent will incur only a portion of the total burden arising from the final rule's provisional credit requirements.[931]

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%

Costs associated with limited liability and error resolution protections. Those few directly affected small or potentially small non-bank entities that do not provide limited liability or error resolution protections to consumers will incur costs associated with providing these protections. As described in the section 1022(b)(2)(A) discussion, these entities will incur one-time implementation costs associated with the establishment or modification of

[931] The Bureau repeated this analysis restricting attention to the 13 non-bank entities that could be classified as small. The distribution of policies was as follows: 31 percent of entities complied with Regulation E because they only offered payroll card accounts; 46 percent provided full error resolution with provisional credit for all reviewed agreements (excluding payroll only providers); 8 percent provided error resolution with limitations on provisional credit for at least some reviewed agreements; 8 percent provided error resolution with no mention of provisional credit for at least some reviewed agreements; and 0 percent did not provide error resolution protections. Prepaid account agreements could not be located for 8 percent of the small non-bank entities.

policies and procedures to extend these protections (in addition to increased ongoing operational costs). This includes costs associated with developing the capacity to: (1) Give required error resolution notices to consumers; (2) receive oral or written error claims; (3) investigate error claims; (4) provide consumers with investigation results in writing; (5) respond to any consumer requests for copies of the documents that the institution relied upon in making its determination of whether the transaction was authorized; and (6) correct any errors discovered within the required timeframes. The establishment of these policies and procedures will constitute a one-time cost for those few small or potentially small non-bank entities that do not offer limited liability or error resolution protections to consumers. Implementing these procedures and paying out claims and provisional credit will create ongoing costs.[932]

Both those directly affected small or potentially small non-bank entities that offer limited liability and error resolution protections to consumers but do not provide provisional credit and those entities that provide liability protections or provisional credit in a more limited form than required by the final rule will incur costs arising from the final rule. The costs associated with paying out claims will increase for those directly affected entities offering less comprehensive liability protections than required by the final rule. Further, directly affected entities that do not offer provisional credit (or that offer it in a more limited form) will be unable to use funds extended as provisional credit during the investigation period for other uses and will therefore incur a small opportunity cost. Finally, an entity that extends provisional credit and subsequently determines that an alleged error was, in fact, an authorized transfer could incur additional costs if it is unable to reclaim provisional credit previously extended.

The costs associated with providing these consumer protections may vary across covered entities for several reasons. For example, an entity's customer base may influence both the type of errors reported (and therefore the costs associated with investigations) as well as the likelihood of reclaiming provisional credit previously extended. The initial screening procedures used by a prepaid account provider to determine account eligibility, as well as ongoing monitoring of accounts, likely affect realized losses. Although small entities could be at a disadvantage with respect to fraud screening relative to larger entities that may have access to more information or more sophisticated screening technologies, small entities are sometimes able to rely on industry partners to screen for and to investigate potential fraud.[933] Small entities may choose to limit fraud liability by closing accounts that have repeated error claims or by not offering accounts to individuals who previously engaged in potentially fraudulent activity.

As discussed in the proposed rule, the Bureau conducted pre-proposal industry outreach to attempt to determine the costs borne by prepaid account providers to implement Regulation E compliant error resolution, including provisional credit. Estimates of the ongoing costs associated with providing error resolution with provisional credit varied. During this outreach, one program manager, which provided limited liability and error resolution protections with provisional credit consistent with Regulation E to all consumers, stated that it reserved $0.35 per active cardholder per month for fraud losses (including both losses related to Regulation E error claims as well as other types of fraud). During pre-proposal outreach, another program manager, which also provided limited liability and error resolution with provisional credit consistent with Regulation E, stated that it incurred total fraud losses related to Regulation E that translated to roughly $0.22 per cardholder per month. One commenter to the proposed rule that processes prepaid transactions estimated that the prepaid industry generally experiences fraud losses of between four and five basis points when the cardholder's identity is known. The commenter estimated that providing limited liability and error resolution rights for transactions taking place before a prepaid account is registered would lead to an increase in fraud exposure of one additional basis point. However, the Bureau notes that the final rule does not require that financial institutions offer provisional credit to holders of unverified prepaid accounts.

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) will sustain increased ongoing operational costs. The Bureau did not receive comment explicitly addressing the incremental cost associated with extending provisional credit incurred by those entities that otherwise provide error resolution protections. However, estimates derived from 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).[934] If the upper bound of overall fraud losses, including losses associated with providing provisional credit, is assumed to be $0.22 to $0.35 per active cardholder per month (based on the information above), it follows that the cost to extend provisional credit to all consumers is roughly $0.08 to $0.12 per active cardholder per month. Because many financial institutions currently provide provisional credit (albeit in

[932] This discussion assumes that the burdens associated with the requirements to provide liability and error resolution protections are borne by a non-bank program manager. However, in practice, some banks or credit unions may perform these functions themselves, rather than rely on a non-bank program manager. Further, non-bank program managers tasked with the functions associated with resolving errors by issuing banks may in turn rely on industry partners, including processors. The Bureau's understanding from discussion with industry participants in developing the proposed rule is that processors may charge a fixed fee per dispute as well as a variable fee component that depends on the complexity of the dispute and investigation.

[933] In pre-proposal outreach, 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.

[934] During pre-proposal outreach, one program manager told the Bureau that when extended provisional credit to all accounts (having previously only provided provisional credit to those accounts receiving Federal payments), its losses from providing provisional credit increased by 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 7 and 10 percent of the initial level of fraud losses and just over a third of the final fraud losses. This is 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, L = P + E prior to the expansion of provisional credit coverage to all consumers. After the expansion of provisional credit coverage to all consumers (and assuming no change in E), it follows that (i.) 1.4L = 5P + E if losses increase by four times the previous level and (ii.) 1.4L = 7P + E if losses increase by six times the previous level. 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 the 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.).

limited circumstances), the impact of this provision is further mitigated.

3. Other Major Provisions Potentially Affecting Small Entities

The final rule includes a number of additional requirements that are fully applicable to small entities. The final rule requires financial institutions to comply with the following provisions. For the reasons stated below, the cumulative burdens arising from these provisions, which are more extensively described in the section 1022(b)(2)(A) discussion above, are expected to be minimal for small non-bank entities.

Pre-acquisition disclosure requirements. The final rule requires that financial institutions disclose fees to consumers in a specifically described disclosure form (the ''short form''). The short form disclosure includes a ''static'' portion containing specified subset of fees, an ''additional fee types'' portion that states the total number of fee types that are charged for the prepaid account but which are not disclosed in the static portion of the form, the two fee types that generated the most revenue from consumers during the prior 24-month period that are not disclosed in the static portion of the form, and certain other information.[935] In addition to the short form disclosure, financial institutions are required to provide a disclosure that includes a full listing of fees and related conditions, together with certain other information, in accordance with certain formatting requirements (the ''long form'').

Financial institutions will need to review and revise existing disclosures to ensure that they conform to the new requirements and will incur one-time implementation costs to do so. Because certain disclosure requirements depend on the channel through which the prepaid account is distributed, the magnitude of the burden associated these requirements will depend on how the prepaid account is distributed.[936] For those prepaid accounts distributed in a retail location, the final rule requires that the product's packaging material include the short form disclosure and that the long form disclosure be accessible by telephone and online. Financial institutions distributing prepaid accounts online are required to provide the short form and long form disclosures online, and those financial institutions distributing prepaid accounts in person (other than in a retail location) are required to provide both forms in print. For transactions conducted by telephone, financial institutions are 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.

From industry outreach conducted in connection with the proposed rule, the Bureau learned that small non-bank entities typically do not distribute prepaid accounts through the retail channel.[937] To the extent that they distribute accounts through the retail channel, small non-bank entities generally rely on this channel for a limited proportion of their overall portfolio. Small non-bank entities distributing accounts through non-retail channels will incur a one-time cost to review and edit existing disclosures to ensure that they include all applicable fees and follow the specified formatting requirements. This may include acquiring the capability to determine which fees must be disclosed in the revenue-based fee portion of the short form disclosure if such information is not already readily accessible. Small non-bank entities will need to revise the disclosures they currently provide to comply with the final rule's requirements. This will require small non-bank entities distributing prepaid accounts online to update Web sites. Those small non-bank entities distributing prepaid accounts orally by telephone may need to update interactive voice response (IVR) systems, scripts, and training for live customer service agents.

As described in the section 1022(b)(2)(A) discussion, the pre-acquisition disclosure requirements also impose ongoing operational costs. To determine the composition of the short form disclosure, small non-bank entities will need to review revenue data on an annual biennial basis to ascertain which fees should be included in the revenue-based part of the short form disclosure. Absent a need to revise the short form disclosure, reviewing the information necessary to make these determinations should comprise minimal ongoing cost. If a revision to the disclosure is necessary, small non-bank entities will incur costs associated with these revisions. Small non-bank entities will incur costs, believed to be minimal, to update Web sites and phone systems to include the revised disclosures, if applicable. The Bureau believes that the costs associated with updates to written and electronic disclosures are minimal.

Requirements pertaining to consumer access to account information. Other key provisions of the final rule potentially triggering burden include expansions to requirements to provide consumer access to account information (largely extending the current payroll card account periodic statement alternative to all prepaid accounts with certain modifications) and the establishment of certain additional disclosures related to consumer access to account information. Financial institutions offering prepaid accounts are required to comply with Regulation E's periodic statement requirement, but the final rule also provides an alternative means of compliance with this requirement. Specifically, financial institutions are not required to furnish periodic statements to consumers so long as they provide the following at no cost to the consumer: (1) Access to the prepaid account balance through a readily available telephone line; (2) access to at least 12 months of account transaction history online; and (3) at least 24 months of written account transaction history upon the consumer's request. Regardless of whether the financial institution chooses to provide periodic statements or implement the alternative, the financial institution must disclose to the consumer a summary total of the amount of all fees it assessed against the consumer's prepaid account, for both the prior calendar month as well as the calendar year to date.

Although not all covered financial institutions are required to make transaction history available to consumers under current Regulation E, current industry practice is to provide consumers with electronic access to at least 60 days of transaction history. Regulation E requires financial institutions to provide payroll card accountholders with electronic access to at least 60 days of account history if they do not furnish periodic statements.

[935] Additionally, a short form disclosure for a payroll card account or government benefit account must include either (1) a statement that consumers are not required to accept such an account that directs the consumer to ask about other ways to receive wages, salary, or benefits, or (2) a statement that the consumer has several options to receive wages, salary, or benefits, followed by a list of options available to the consumer, and a statement that directs the consumer to choose one.

[936] These channels include retail distribution, online distribution, and in-person distribution (other than in a retail location), among others. The impacts on financial institutions relying on each of these channels to distribute prepaid accounts are described in the section 1022(b)(2)(A) discussion.

[937] This is, in part, due to the potentially high fixed costs associated with distributing prepaid accounts through this channel. If a small, non-bank entity performs program management functions to offer a white label solution in a retail environment, it could incur some implementation costs depending on the terms of the contract. The Bureau's understanding is that few such small, non-bank entities exist.

Additionally, the FMS Rule requires that consumers holding accounts that receive Federal payments have access to at least 60 days of account history. In addition, the Bureau understands from industry outreach conducted in connection with the proposed rule that some financial institutions make available online more than 60 days of transaction history, ranging from six months to the entire life of the prepaid account. The final rule requires that those financial institutions relying on the alternative means of complying with Regulation E's periodic statement requirement provide 12 months of electronic history as well as 24 months of written account history on request. Additionally, financial institutions offering prepaid accounts will need to modify existing transaction history reporting or periodic statements to include the required summary total of fees.

The costs associated with implementing these provisions depend on the extent to which the financial institution 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 media should be limited. Those covered entities that format their own periodic statements or transaction histories, and do not currently display the required summary total of fees on their periodic statements or transaction histories, will incur a one-time implementation cost to modify these disclosures.[938]

Many small non-bank entities rely on processors to provide online hosting of consumer account histories. The Bureau's understanding from outreach conducted in connection with the proposed rule is that entities outsourcing this function pay processors a fee per prepaid account. This fee may depend on the extent of account history provided to consumers as well as the total number of accounts hosted by the processor.[939] These entities generally rely on their processor to modify periodic statements or electronic transaction histories to display the required summary total of fees.[940] However, one non-bank program manager predicted that its processor would offer such a modification as part of its standard package of services at no additional cost if such summary totals were a regulatory requirement.

As discussed in the section 1022(b)(2)(A) consideration of benefits, costs, and impacts, the Bureau's understanding from industry outreach is that most covered financial institutions provide consumers with telephone access to balance information. Therefore, the Bureau regards the potential burdens associated with these provisions to be de minimis and not likely, considered separately or cumulatively, to result in a significant economic impact.

Submission and posting of account agreements. The final rule also requires prepaid account issuers to submit copies of their agreements to the Bureau on a rolling basis and to post the agreements that they offer to the general public on their publicly available Web sites. For any issuer that is not required by § 1005.19(c) to post agreements on its own publicly available Web site, the final rule requires that the issuer provide access to individual account agreements to any consumer holding an open prepaid account. An issuer may 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.[941]

The Bureau believes that the costs associated with submitting new and updated agreements to the Bureau (and withdrawing old agreements) and responding to consumer requests will be minimal because, in most cases, entities will comply with the requirement through electronic submission of the agreement to the Bureau and by posting copies of their agreement on a preexisting publicly available Web site. For those entities that choose not to post agreements online, the cost associated with responding to ad hoc consumer requests for copies of account agreements would include the one-time cost of training customer service agents and ongoing costs for postage.

D. Conclusion

To determine whether the economic impact of the final rule will be significant, the Bureau compared estimates of the cumulative costs imposed by the provisions on directly affected small or potentially small non-bank entities to estimates of revenues earned by these entities.[942] To determine whether the final rule is likely to have a significant economic impact on directly affected small non-bank entities, the Bureau compares an estimate of revenues earned by the entities to an estimate of the aggregate potential costs incurred by these entities to comply with the final rule's provisions.[943]

Revenues. Because 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

[938] During outreach conducted in connection with the proposed rule, one program manager estimated that it would cost approximately $15,000 to modify its Web site to provide the summary total of fees as well as a summary total of the total amount of deposits to the account and the total amount of all debits made to the prepaid account. Because the proposed rule's approach required additional modifications, this should be an upper bound on the estimated cost to this program manager of modifying its Web site to display only the summary total of fees required by the final rule.

[939] During outreach conducted in connection with the proposed rule, one non-bank program manager that relies on a processor for this function stated that its processor charged fees for data storage on a per-account basis at activation. 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, because processor prices decrease with scale, it paid among the highest prices charged by the processor because it was operating at low scale.

[940] During outreach conducted in connection with the proposed rule, one non-bank program manager stated that its processor quoted a one-time cost of $65,000 associated with providing the summary totals required by the proposed rule on its processor-hosted Web site (in response to an ad-hoc request). In all probability, this represents an upper bound for the true development cost because this number likely includes a mark-up over the true cost of providing the service, and the final rule does not require all of the summary totals included in the proposed rule.

[941] If the issuer chooses to comply with this requirement by providing a copy of the agreement in response to a consumer request, the issuer must provide the consumer with the ability to request a copy of the agreement by calling a readily available telephone line. The issuer is 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.

[942] The Bureau did not separately consider the costs borne by small banks and credit unions because the final rule will not directly affect a substantial number of such entities, as shown above. However, it is worth noting that issuers (typically banks and credit unions) and program managers (frequently non-banks) jointly earn revenues and bear costs. The current policies of small non-bank entities are considered in determining if the economic impact of the final rule will be significant.

[943] The revenue split between the issuer and the program manager varies across prepaid programs that rely on distinct firms to perform these functions. 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 final rule's provisions. However, it is worth noting, for purposes of considering the economic impact of the final rule's requirements with respect to error resolution and limited liability, that a program manager that assumes fraud risk likely has the ability to determine the fees charged to consumers, to control screening procedures, or to take other actions to mitigate fraud losses.

of the likely fee and interchange revenue earned per cardholder per month for certain types of prepaid accounts.[944] 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 accounts distributed online and $6.77 per active cardholder per month for payroll card accounts.[945]

Costs. The Bureau does not derive a cost per active cardholder per month incurred by small non-bank entities arising from the rule's provisions relating to credit. One credit union service organization commenter estimated that it would take most small financial institutions $95,000 to comply with the credit-related provisions of the final rule. However, the Bureau assumes that final rule's provisions regarding credit will constitute a significant economic impact on those small non-bank entities that currently offer overdraft services in connection with their prepaid products.

As described above, the Bureau estimates that those entities that do not offer any form of limited liability or error resolution protections to consumers will sustain an increase in ongoing costs of $0.22 to $0.35 per active cardholder per month. In addition, these entities will incur costs associated with implementing Regulation E compliant limited liability and error resolution protections.

The Bureau estimates that those entities that currently provide limited liability and error resolution protections without provisional credit will experience an increase in ongoing costs of roughly $0.08 to $0.12 per active cardholder per month (or up to one-third of the ongoing costs incurred by those entities that do not provide any form of limited liability or error resolution protections). In addition, these entities will incur costs associated with implementing the administration of provisional credit. The one-time implementation costs for these activities should be minimal for those entities already otherwise providing error resolution.

The Bureau does not have information that would enable it to isolate the ongoing cost associated with extending Regulation E's limited liability protections from the ongoing cost of providing error resolution generally. However, to the extent that ongoing fraud loss estimates provided to the Bureau during pre-proposal outreach include the cost associated with providing liability limitations, these costs may be, at most, $0.23 per cardholder per month.[946] Given this uncertainty, the Bureau conservatively assumes that the absence of either limited liability protections or error resolution protections could cause an entity to experience a significant economic impact.

With respect to other costs, those small or potentially small entities offering prepaid accounts typically do not provide these accounts through the retail channel. Therefore, the costs associated with the pre-acquisition disclosure requirements, expressed on a per active cardholder per month basis, are minimal.[947] As discussed above, the ongoing operational and one-time implementation costs associated with the final rule's requirements regarding access to account information will vary depending on whether the entity performs these functions in-house or relies on an external processor. Some entities will incur costs associated with making available additional transaction history. From the Study of Prepaid Account Agreements, the industry standard appears to be to provide at least 60 days of transaction history information online. Pre-proposal outreach suggested that those entities that rely on a processor may expect an upper bound cost of $0.01 per active cardholder per month to make additional transaction history information available.[948] In addition, the Bureau estimates the upper bound of the cost associated with modifying transaction histories or statements to include the required fee totals to be less than $0.01 per active cardholder per month for those performing the software modification in-house and $0.02 per active cardholder per month for those relying on a processor to perform the modification.[949] The cost associated with submitting agreements to the Bureau and with responding to consumer requests for agreements is minimal, as described above in the

[944] *See* 2012 FRB Philadelphia Study*; see also* 2012 FRB Kansas City Study. One credit union commenter estimated that average annual prepaid profits were $5,000 per small financial institution, but it did not provide revenue information nor did it clarify whether these were profits earned by financial institutions that offer prepaid cards through a vendor. Another commenter suggested that the data relied upon by the Bureau was old and that prices in the industry have decreased, but the commenter did not provide an alternative preferred source of data nor did the commenter argue that revenues per cardholder have decreased.

[945] Using this approach, the Bureau obtained a revenue estimate of $9.14 per active cardholder per month for GPR accounts distributed in a retail setting, but the Bureau notes that its understanding from pre-proposal industry outreach is that small non-bank entities typically do not distribute prepaid accounts in a retail setting. The Bureau obtained revenue estimates by combining information from tables 5.7 and 5.8 from the 2012 FRB Philadelphia Study. For example, the Bureau estimated revenues earned from GPR accounts distributed online in the following manner. First, using information in table 5.7, the difference between the interchange received and the interchange paid ($23.35 − $6.41 = $16.94) determined the net interchange. Next, the ratio of total revenues (assuming that these are composed of only cardholder fees and net interchange earned) to cardholder fees was obtained (($76.00 + $16.94)/$76.00 = 1.223). This inflator was applied to cardholder fees reported in table 5.8 (1.223*$8.16 = $9.98).

[946] 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.

[947] For those entities distributing prepaid accounts via the telephone, the costs associated with the pre-acquisition disclosure requirements, which are considered more extensively in the section 1022(b)(2)(A) discussion, are estimated to be $0.03 per active cardholder per month (assuming that 5 percent of consumers acquiring an account via the telephone request that the long form be read to them and an average card life of 11 months). According to the 2012 FRB Kansas City Study, the mean lifespan for prepaid cards included in its analysis was 347 days. 2012 FRB Kansas City Study at 47 tbl.4.1.

The costs associated with providing the pre-acquisition disclosure for accounts distributed online are minimal because they consist largely of a Web site update. According to one survey, online distribution is nine times as common as phone distribution. 2014 Pew Survey at 5. Therefore, accounting for the relative frequency of the distribution channel, the costs associated with the pre-acquisition disclosure requirements, expressed on an active cardholder per month basis, are de minimis.

[948] One program manager operating at small scale reported that its costs were $0.08 per account for three months of transaction history and $0.19 per account for one year of transaction history. The processor charged these costs at activation (one time). Given an average GPR card account life of 11 months, this translates to an increase in costs of $0.01 per active cardholder per month.

[949] To derive these estimates, the Bureau assumes that a small non-bank program manager earns $3 million in annual revenues. This was the median revenue estimate identified by the Bureau for those small non-bank program managers for which a revenue estimate was located in publicly available information. Using the estimate of $9.98 in revenues per active cardholder per month cited above for GPR card revenues, this translates to roughly 300,601($3,000,000/$9.98) active cardholder-months on an annual basis. The Bureau assumes that these fixed implementation costs are spread out over a five year period (or over 1,503,005 active cardholder-months). Therefore, the upper bound of the cost associated with modifying transaction histories or statements to include the required fee totals is estimated to be $0.01 per active cardholder per month, using the cost estimate of $15,000 quoted above, ($15,000/1,503,005) for those entities performing the software modification in-house and $0.02 per active cardholder per month, taking the average of the two cost estimates ($65,000 and $0) quoted above, (($65,000 + $0)/(2*1,503,005)) for those entities relying on a processor to perform the modification.

section 1022(b)(2)(A) consideration of benefits, costs, and impacts.

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 provisions except for those concerning covered separate credit features accessible by a hybrid prepaid-credit card. Such non-compliance related economic costs, including potential costs relating to disclosure, are difficult to predict, and the Bureau does not have reason to believe that they would cause small entities to experience a significant economic impact. In the aggregate, the costs not related to credit, error resolution, and limited liability are estimated to comprise at most $0.06 per active cardholder per month.

Entities experiencing a significant economic impact. Considering the revenue estimates described above, the Bureau concludes that those few small or potentially small non-bank entities that provide prepaid accounts that lack either limited liability or error resolution protections will likely experience a significant economic impact.[950] In addition, the Bureau assumes that those entities currently offering overdraft services in connection with prepaid accounts may experience a significant economic impact from the final rule's provisions.

In sum, the Bureau believes that there are approximately 14 directly affected small or potentially small non-bank entities are likely to experience a significant economic impact from the final rule's provisions. In arriving at this conclusion, the Bureau used 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.[951] The Bureau assumes that the two directly affected small or potentially small non-bank entities that offer covered separate credit features accessible by a hybrid prepaid-credit card will experience a significant economic impact from the final rule's provisions. In addition, the Bureau conservatively assumes that all 12 entities that currently provide liability limitations less than provided by Regulation E will incur a significant economic impact.[952] Two of these entities also do not provide error resolution protections.

These 14 entities comprise less than 1 percent of the 2,325 small non-bank entities in the relevant NAICS code. The Bureau also believes that roughly 2 percent of all small non-bank entities in the relevant NAICS code that perform either EFTs or electronic payment services will experience a significant economic impact.[953]

E. Certification

Accordingly, the undersigned certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[954] Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Further, the Bureau may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

On December 23, 2014, notice of the proposed rule was published in the **Federal Register**. The Bureau invited comment on the burden estimates and any other aspect of the proposed collections of information, including suggestions for reducing the burden. The comment period for the proposal expired on March 23, 2015.

The Bureau received one comment specifically addressing the PRA notice. A commenter from a university research center summarized the quantitative information presented in the PRA notice and asked why the analysis of regulatory costs did not include an estimate of how the proposal would affect prepaid account users and sellers beyond initial regulatory compliance. The Bureau considered the benefits and costs to consumers of the proposed rule, as well as the impact on access to credit, in the discussion pursuant to Dodd-Frank Act section 1022(b). Regarding PRA burden specifically, however, there is no impact on consumers from this rulemaking since only business entities are respondents with respect to the information collections that are materially affected. Regarding program managers and issuers, the Bureau used current market information about costs and other data as well as data on the numbers of users to estimate both the one-time and the ongoing PRA burden of the information collections in the rule. Ongoing PRA burden accounts for burden from the information collections beyond initial regulatory compliance.

The final rule amends 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 part 1005). The Bureau's OMB control number for Regulation Z is 3170–0015 (Truth in Lending Act (Regulation Z) 12 CFR part 1026). As described below, the final rule amends the collections of information currently in Regulation E and Regulation Z subparts B and G. The frequency of response is on occasion. These information collections are required to provide benefits for consumers and are mandatory. The only information the Bureau collects under the final rule are the account agreements

[950] It is worth noting that this approach does not take into account the likely cost and revenue structure of P2P payment programs that may offer prepaid accounts to consumers. However, the Bureau identified only four small or potentially small non-bank entities offering P2P payment programs. One of these entities does not provide error resolution protections for consumers so the Bureau assumes that it will incur a significant economic impact. 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.

[951] The Bureau excludes payroll only providers from the observed distribution when imputing the likely protections for those 14 small or potentially small non-bank entities for which the Bureau could not locate account agreements. With respect to limited liability, 12 entities are imputed to provide liability limitations consistent with Regulation E, one entity is imputed to provide liability limitations that are less comprehensive than what Regulation E provides, and one entity is imputed to not provide liability limitations. With respect to error resolution, eight entities are imputed to provide error resolution consistently with Regulation E (including provisional credit), four entities are imputed to provide error resolution consistently with Regulation E but with limitations on provisional credit, and two entities are imputed to provide error resolution consistently with Regulation E but no provisional credit.

[952] These 12 entities include six entities that do not provide liability limitations, four entities that provide liability limitations that are not as comprehensive as required by Regulation E, one entity imputed to not provide liability limitations, and one entity imputed to provide liability limitations that are not as comprehensive as those required by Regulation E.

[953] To derive this estimate, the Bureau assumes that 700 entities are within the NAICS code 522320 and perform either EFTs 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.

[954] 44 U.S.C. 3501 *et seq.*

for prepaid account programs, so no issue of confidentiality arises. The affected public 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 are directly affected by the final rule.

The Bureau generally accounts 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 and insured credit unions 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 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 account providers likely subject to the final rule, including Bureau respondents, is one-time burden of 155,347 hours and ongoing burden of 14,304 hours. The Bureau allocates to itself 76,343 hours of one-time burden: Bureau depository respondents account for 15,504 hours while Bureau non-depository respondents account for 121,678 hours, half of which the Bureau allocates to itself and half to the FTC. The remaining one-time burden (155,347 − 15,504 − 121,678 = 18,165 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 7,207 hours of ongoing burden: Bureau depository respondents account for 1,410 hours while Bureau non-depository respondents account for 11,595 hours, half of which the Bureau allocates to itself and half to the FTC. The remaining ongoing burden (14,304 − 1,410 − 11,595 = 1,299 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 three non-depository institutions subject to the final rule would be one-time burden of 460 hours and ongoing burden of 6,491 hours. The Bureau allocates to itself half of both these burden estimates (230 hours and 3,245 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 changes for a given institution may vary based on the size, complexity, and practices of the respondent. The Bureau used existing burden estimates, information obtained through industry research and outreach, and information provided in comments on the proposed rule to develop the figures presented below.

Most prepaid account programs already comply with the current requirements of Regulation E, as they apply to payroll card accounts. The additional requirements in the final rule would, with a few exceptions, require small extensions or revisions to existing practices after the initial costs. There are several participants in the prepaid account supply chain and the activities of the participants may vary across prepaid account 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.[955]

Regarding the new requirements in Regulation E, the Bureau's PRA burden estimation methodology assumes that one-time burden from the short form and long form disclosure requirements and the access to account information requirement depends on the number of fee schedules. The number of responses-per-respondent for these information collections is the number of fee schedules per program manager. The one-time burden from the error resolution requirements arises from the relatively few programs that do not already meet the requirements. The number of responses-per-respondent for this information collection is the number of non-compliant programs per program manager. We assume that the one-time burden from the rolling submission of account agreements, which includes fee schedules, depends primarily on the fee schedule, and therefore the number of responses-per-respondent for this information collection is the number of fee schedules per issuer. Ongoing burden may increase with the above factors as well as with the number of customers.

A. Regulation E

As discussed further below, the final rule requires financial institutions to make available to consumers disclosures before a consumer acquires a prepaid account. These disclosures take two forms: A short form disclosure highlighting key fees and information that the Bureau believes are most important for consumers to know about prior to acquisition and a long form disclosure that sets forth all of the prepaid account's fees and the conditions under which those fees could be imposed as well as certain other information. Second, the final rule extends, with certain modifications, existing error resolution and limited liability provisions for payroll card accounts and certain government benefit accounts to all prepaid accounts.[956] Third, the final rule adopts provisions requiring prepaid account issuers to submit agreements to the Bureau for posting on a publicly-available Web site established and maintained by the Bureau and to post prepaid account agreements offered to the public on the issuers' own Web sites. Finally, the final rule, as applicable, revises and clarifies subparts A and B of Regulation E in various places to reflect the new provisions adopted for prepaid accounts. These revisions and clarifications include, among other

[955] An issuer may also be a program manager and issuers can delegate to program managers the submission of prepaid account agreements to the Bureau. These practices would not affect any of the Bureau's estimates of total burden but may affect how the burden is divided among depository institutions and non-depository institutions.

[956] 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 final rule does not change this.

things, revisions to provisions currently applicable to payroll card accounts and certain government benefit accounts.

The Bureau's Study of Prepaid Account Agreements and review of industry research found that most programs of GPR prepaid accounts and government benefit accounts currently comply with the major provisions of the payroll card requirements of Regulation E. Thus, on an ongoing basis, these accounts will be affected mostly by the modifications adopted in the final rule to the current provisions for payroll card accounts and which will now also hold for GPR prepaid accounts and government benefits accounts.

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. Final § 1005.18(f)(1) expands 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 EFTs. However, the Bureau understands that most fees are currently generally disclosed at account opening. Thus, the one-time and ongoing burden from this requirement should be minimal.

Providers offering certain EFT services for prepaid accounts would also need to provide transaction disclosures. For example, a disclosure would be required for transactions conducted at an ATM. The Bureau believes that most or all providers currently give these disclosures. In the alternative, however, 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.

Under final § 1005.18(b)(2) and (4), a financial institution is required to make available a short form and a long form disclosure before the consumer acquires the prepaid account, subject to certain exceptions provided in § 1005.18(b)(1). The Bureau estimates that providers, including Bureau respondents, will take 40 hours per prepaid account fee schedule, on average, to develop the short form disclosure and to update systems. Providers will take eight hours every 24 months for each prepaid account fee schedule to evaluate, and if necessary, update the information on the short form disclosure regarding additional fee types. Providers will 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, will take on average 8 hours per prepaid account fee schedule to develop the long form disclosure and update systems. Most of the content of the long form disclosure is already provided in prepaid account agreements.[957]

Final § 1005.18(f)(3) requires 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.

Final § 1005.18(c)(1) requires financial institutions to furnish periodic statements unless the provider uses the alternative method of compliance, which requires the financial institution to make available to the consumer the following information: The consumer's account balance, through a readily available telephone line, at least 12 months of transaction history electronically, and written transaction history in response to an oral or written request that covers the 24 months preceding the date the financial institution receives the request. The Bureau expects that most providers will use the alternative method of compliance. The Study of Prepaid Account Agreements found that most prepaid account programs provided electronic access to account information; and while few agreements stated that the program provided at least 12 months of prepaid account transaction history, many programs provided access to account information for much longer time frames than what was listed in the account agreements. In addition, several commenters stated that they provided 12 months of electronic transaction history. Regarding the requirement to provide a transaction history in writing pursuant to § 1005.18(c)(1)(iii), few consumers ever request a written transaction history.

Regardless of how a financial institution chooses to comply, final § 1005.18(c)(5) requires that the financial institution disclose to the consumer a summary total of the amount of all fees assessed against the consumer's prepaid account for both the prior month as well as the calendar year to date. This information must be disclosed on any periodic statement and any electronic or written history of account transactions provided.[958] Prepaid account programs generally do not currently provide these summary totals. The Bureau estimates that providers will take on average 24 hours per prepaid account fee schedule to implement these changes.

The final rule extends to all prepaid accounts the limited liability and error resolution provisions of Regulation E, as they currently apply to payroll card accounts.[959] *See* § 1005.18(e)(1) and (2). As discussed above, the 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 will require 8 hours per non-compliant program to develop fully compliant

[957] Final § 1005.18(b)(4)(vii) requires that the long form disclosure include the disclosures described in § 1026.60(e)(1) or (2)(ii) if at any point a covered separate credit feature accessible by a hybrid prepaid-card (as defined in § 1026.61) may be offered in connection with the prepaid account. This burden is minimal given the Bureau's burden estimation methodology for Regulation Z, as explained below. Final § 1005.18(b)(9) provides that if a financial institution principally uses a foreign language in certain circumstances then it must provide both the short and long form in that same foreign language. The Bureau believes that current industry practice regarding pre-acquisition disclosures in foreign languages is generally consistent with this requirement. The long form disclosure also needs to be provided in English upon request, but this is a minimal one-time and ongoing expense.

[958] For periodic statements, the monthly summary may be for the statement period or for the prior calendar month; for other transaction histories, it must be for the prior calendar month.

[959] The Bureau is finalizing an exception from the requirement to provide provisional credit for prepaid accounts (other than payroll card accounts and government benefit accounts) for which the financial institution has not completed its consumer identification and verification process with respect to that prepaid account. § 1005.18(e)(3).

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 5 percent, very few calls involve assertions of error, but escalated calls are time consuming and respondents incur an ongoing burden.

If a financial institution changes a prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, a financial institution must notify consumers with accounts acquired before October 1, 2017 at least 21 days in advance of the change becoming effective, provided the financial institution has the consumer's contact information. If the financial institution obtains the consumer's contact information fewer than 30 days in advance of the change becoming effective, the financial institution is permitted instead to provide notice of the change within 30 days of obtaining the consumer's contact information.

If a financial institution has received E-Sign consent from the consumer, then the financial institution may notify the consumer electronically. Otherwise, if a financial institution is mailing or delivering written communications to the consumer within the applicable time period, then that financial institution must send a notice in physical form. If the financial institution will not be mailing or delivering communications to the consumer within the applicable time period, then the financial institution will be able to notify the consumer in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

Financial institutions with prepaid accounts that offer overdraft credit features are likely to trigger this requirement. For any consumer who has not consented to electronic communications and who will be receiving other physical mailings from the financial institution in the specified time period, that financial institution will incur a cost of printing the notice, which can be included in the envelope or package which was already scheduled to be delivered. It is unlikely that the financial institution will incur additional mailing costs to send these notices. The remaining notices of change may be sent to consumers electronically. Therefore, the Bureau believes that the cost associated with providing these notices is minimal.

Final § 1005.18(h)(2)(ii) requires that financial institutions notify any consumer, who acquires a prepaid account after the effective date in packaging printed prior to the effective date, of any changes as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers within 30 days of acquiring the customer's contact information. In addition, financial institutions must also mail or deliver updated initial disclosures pursuant to § 1005.7 and § 1005.18(f)(1) within 30 days of obtaining the consumer's contact information. Those financial institutions that are affected should not incur significant costs to notify consumers and provide updated initial disclosures. Consumers who have consented to electronic communication may receive the notices and updated disclosures electronically, at a minimal cost to financial institutions. Those consumers who cannot be contacted electronically may receive the notices and updated initial disclosures with another scheduled mailing within the 30 day time period. Financial institutions will incur small costs to print these notices and disclosures, but it is unlikely that financial institutions will incur additional mailing costs. Any remaining consumers who are not scheduled to receive mailings may be notified without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

Final § 1005.19(b) requires certain issuers to submit to the Bureau, on a rolling basis, short form disclosures and prepaid account agreements (including fee schedules) that are offered, amended or withdrawn. The Bureau estimates that each issuer will initially take 1 hour to register and spend 5 minutes to upload each of 17 agreements (our estimate of the overall average number of fee schedules per issuer). Thus the one-time burden is 145 (= 60 + (5*17)) minutes or 2.42 hours per issuer. There is considerable uncertainty regarding the number of issuers that will offer, amend or withdraw an issuer agreement each year on an ongoing basis and the number of issuer agreements that each issuer will offer, amend or withdraw. The Bureau's experience with the submission of credit card agreements pursuant to § 1026.58 of Regulation Z suggests that issuers who upload issuer agreements will upload at most 5 issuer agreements annually on an ongoing basis.[960] We assume that every issuer uploads 5 issuer agreements annually on an ongoing basis, so our estimate is an upper bound on the burden.

The estimated burden on Bureau respondents from the final rule's changes to Regulation E are summarized below.

[960] In a recent analysis of submissions for the third quarter of 2014, the Bureau found 103 credit card issuers submitted 429 agreements in a single quarter, so just over four per issuer. 80 FR 21153, 21156. We repeated this analysis using submissions for all of 2014, which is the last year of data available, and found that 210 credit card issuers submitted 1002 agreements, so just under five per issuer. *See http://www.consumerfinance.gov/credit-cards/agreements/.*

Table 1								
		One-time Burden (Bureau Respondents)					One-time Burden (Bureau Amount)	
		Number of Respondents	Average Burden per Response (hours)	Average Responses 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), 1005.15(c)	Short form disclosure	160	40.00	11.87	474.91	75,985.33	33,718.49	42,266.84
1005.18(b)(4), 1005.15(c)	Long form disclosure	160	8.00	11.87	94.98	15,197.07	6,743.70	8,453.37
1005.18(c)(5), 1005.15(d)	Access to prepaid account information	160	24.00	11.87	284.94	45,591.20	20,231.09	25,360.10
1005.18(e)(2), 1005.11	Error resolution	20	8.00	1.86	14.86	297.14	133.71	163.43
1005.19(b)	Submission of agreements	46	2.42	1.00	2.42	111.32	12.10	99.22
Total						**137,182.05**	**60,839.09**	**76,342.96**

Table 2							
		Ongoing burden (Bureau respondents)				Ongoing burden (Bureau amount)	
		Number of Respondents	Average Burden per Response (minutes)	Average Annual Responses per Respondent	Total Ongoing Burden (hours)	Half the burden on Bureau non-DIs (hours)	Ongoing Bureau burden (hours)
1005.18(b)(2)(ix)	Short form additional fee type disclosure	160	240	11.87	7,599.84	3,371.92	4,227.92
1005.18(e)(2), 1005.11	Error resolution	20	30	538.52	5,385.19	2,423.34	2,961.85
1005.19(b)	Submission of agreements	46	5	5.00	19.17	2.08	17.08
Total					**13,004.20**	**5,797.34**	**7,206.86**

B. Regulation Z

The Bureau understands that approximately 218,000 consumers currently have a form of overdraft protection on their GPR and payroll cards.[961] The Bureau's PRA estimation methodology assumes that the same number will use a credit feature after the final rule takes effect, although this is likely an overestimate.[962] 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, in the final rule, the Bureau generally intends to cover under Regulation Z overdraft credit features offered in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners (except as described in new § 1026.61(a)(4)).[963] The Bureau anticipates that most of these overdraft credit features covered under the final rule would meet the definition of ''open-end credit.'' [964] In addition, under the final rule, a prepaid card that accesses such an overdraft credit feature would be a ''credit card'' under Regulation Z.[965] The overdraft credit features described above would be governed by subparts A, B, D, and G of Regulation Z. Pursuant to Regulation Z, persons offering such plans would be required to comply with the requirements governing information collections. These requirements are as follows.

As discussed below, certain disclosure provisions in Regulation Z apply to ''creditors'' and other disclosure provisions apply to ''card issuers.'' Under the final rule, a person that is offering an overdraft credit feature as described above in connection with a prepaid account would be both a ''card issuer'' and a ''creditor'' under Regulation Z.

Persons offering an overdraft credit feature described above in connection with a prepaid account are required to inform consumers of costs and terms before they use the credit feature and in general to inform them of certain subsequent changes in the terms of the credit feature. Initial information would need to include the finance charge and

[961] The Bureau is aware of three providers of overdraft credit features on prepaid accounts and believes that NetSpend is the only significant provider. A recent financial filing suggested that NetSpend had 3.6 million active cards as of Sept. 30, 2015. Total Sys. Serv., Inc., Form 10–Q, at 27, *available at https://www.sec.gov/Archives/edgar/data/721683/000119312515367677/d97203d10q.htm* (for the quarterly period ended Sept. 30, 2015). NetSpend also stated in a news article that only about 6 percent of its customers regularly use overdraft. *See* 2012 NetSpend WSJ Article. Assuming each NetSpend customer has overdraft protection on only one account, there are 216,000 prepaid accounts with overdraft protection. No data is available for the other two providers. The Bureau believes, based on industry data, that the median provider of prepaid accounts likely has about 10,000 customers. Assuming 10 percent have an overdraft service or credit feature on one prepaid account gives an additional 2,000 accounts with overdraft protection.

[962] Current data on the size of the market for credit features on prepaid accounts has limited usefulness in predicting the size of the market under the final rule, since both eligibility criteria and credit features may change as a result. See previous discussions in this supplementary information.

[963] These overdraft credit features are covered under the term ''covered separate credit feature'' as defined in new § 1026.61.

[964] 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.

[965] The final rule defines such a prepaid card that is a credit card as a ''hybrid prepaid-credit card'' in new § 1026.61.

other charges, the 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 creditor changes certain terms initially disclosed, or increases the minimum periodic payment, a written change-in-terms notice generally would need to be provided to the consumer at least 45 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.[966]

Creditors are required to provide a written statement of activity for each billing cycle (*i.e.,* periodic statement). The statement has to be provided for each account that has a balance of more than $1 or on which a finance charge is imposed, and it has 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.

Creditors are required to notify consumers about their rights and responsibilities regarding billing errors. Creditors have to provide either a complete statement of billing rights each year or a summary on each periodic statement. If a consumer alleges a billing error, the creditor must provide an acknowledgment, within 30 days of receipt, that the creditor received the consumer's error notice and must report on the results of its investigation within 90 days. If a billing error did not occur, the creditor must provide an explanation as to why the creditor believed an error did not occur and provide documentary evidence to the consumer upon request. The creditor must also 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 that, based on discussions with industry, in any year 1.5 percent of customers will assert errors that require significant time from customer service representatives.

Persons offering an overdraft credit feature discussed above in connection with a prepaid account are 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 credit feature described above in connection with a prepaid account are required to send the Bureau copies of the overdraft credit feature agreement. The Bureau estimates each card issuer will take 5 minutes to upload each agreement. We assume the same overall average number of agreements per issuer as above (which will not be representative of any of the three), so each issuer will initially take 85 minutes to upload 17 agreements and will upload 5 agreements annually on an ongoing basis.

Finally, persons offering overdraft credit features as described above in connection with a prepaid account must provide additional disclosures with solicitations and applications. Such card issuers must 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.[967]

The estimated burden on Bureau respondents from the changes to Regulation Z are summarized below.

[966] 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. 2012 FRB Kansas City Study at 47 tbl.4.1.

[967] 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.

Table 3						
		One-time burden (Bureau Respondents)				
		Number of Respondents	Average Burden per Response (hours)	Average Responses per Respondent	Total One-time Burden (hours)	Bureau Amount
1026.6(b)	Account opening disclosures	3	8	1	24.00	12.00
1026.7(b)	Periodic statements	3	80	1	240.00	120.00
1026.9	Change in terms	3	8	1	24.00	12.00
1026.13	Error resolution	3	8	1	24.00	12.00
1026.16	Advertising	3	40	1	120.00	60.00
1026.58	Internet posting of credit card agreements	3	1.42	1	4.25	2.13
1026.60(a)(2)	Application and solicitation disclosures	3	8	1	24.00	12.00
Total					**460.25**	**230.13**

Table 4						
		Ongoing burden (Bureau Respondents)				
		Number of Respondents	Average Burden per Response (minutes)	Average Annual Responses per Respondent	Total Ongoing Burden (hours)	Bureau Amount
1026.6(b)	Account opening disclosures	3	0.25	78,667	983.33	491.67
1026.7(b)	Periodic statements	3	0.0625	944,000	2,950.00	1,475.00
1026.9	Change in terms	3	0.125	78,667	491.67	245.83
1026.13	Error resolution	3	30	1,180	1,770.00	885.00
1026.16	Advertising	3	25	5	6.25	3.13
1026.58	Internet posting of credit card agreements	3	5	5	1.25	0.63
1026.60(a)(2)	Application and solicitation disclosures	3	480	12	288.00	144.00
Total					**6,490.50**	**3,245.25**

The Consumer Financial Protection Bureau has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: 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 *oira_submission@omb.eop.gov*, with copies to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by the internet to *CFPB_Public_PRA@cfpb.gov*.

List of Subjects

12 CFR Part 1005

Automated teller machines, Banks, Banking, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittances, Reporting and recordkeeping requirements, Savings Associations.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, 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 amends 12 CFR parts 1005 and 1026 as follows:

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 1005 continues 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 (3) to read as follows:

§ 1005.2 Definitions.

* * * * *

(b) * * *

(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) ''Prepaid account'' means:

(A) 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; or

(B) A ''government benefit account,'' as defined in § 1005.15(a)(2); or

(C) An account that is marketed or labeled as ''prepaid'' and that is redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at automated teller machines; or

(D) An account:

(*1*) That is issued on a prepaid basis in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter,

(*2*) Whose primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers, and

(*3*) That is not a checking account, share draft account, or negotiable order of withdrawal account.

(ii) For purposes of paragraphs (b)(3)(i)(C) and (D) of this section, the term ''prepaid account'' does not include:

(A) An account that is loaded only with funds from a health savings account, flexible spending arrangement, medical savings account, health reimbursement arrangement, dependent care assistance program, or transit or parking reimbursement arrangement;

(B) An account that is directly or indirectly established through a third party and loaded only with qualified disaster relief payments;

(C) The person-to-person functionality of an account established by or through the United States government whose primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities;

(D)(*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; or

(E) An account established for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency, as set forth in § 1005.15(a)(2).

* * * * *

■ 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 covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61.

* * * * *

■ 4. Section 1005.11 is amended by revising paragraphs (c)(2)(i)(A) and (B) and adding paragraph (c)(2)(i)(C) to read as follows:

§ 1005.11 Procedures for resolving errors.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) The institution requires but does not receive written confirmation within 10 business days of an oral notice of error;

(B) The alleged error involves an account that is subject to Regulation T of the Board of Governors of the Federal Reserve System (Securities Credit by Brokers and Dealers, 12 CFR part 220); or

(C) The alleged error involves a prepaid account, other than a payroll card account or government benefit account, for which the financial institution has not completed its consumer identification and verification process, as set forth in § 1005.18(e)(3)(ii).

* * * * *

■ 5. Section 1005.12 is amended by revising paragraphs (a)(1)(ii), (a)(1)(iv), and (a)(2)(i) and (ii) and adding paragraph (a)(2)(iii) 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;

* * * * *

(iv) A consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving:

(A) Except with respect to 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);

(B) With respect to transactions that involve a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in Regulation Z, 12 CFR 1026.61, an extension of credit that is incident to an electronic fund transfer that occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction;

(C) Transactions that involves credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in Regulation Z, 12 CFR 1026.61(a)(4); and

(D) With respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, transactions that access the prepaid account, as applicable.

(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);

(ii) Except as provided in paragraph (a)(1)(ii) of this section, the issuance of a credit card that is also an access device; and

(iii) With respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, a consumer's liability for unauthorized use and the investigation of errors involving transactions that access the non-covered separate credit feature, as applicable.

* * * * *

■ 6. 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).

(2) *Additional content for government benefit accounts*—(i) *Statement regarding consumer's payment options.* 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 directing the consumer to ask about other ways to receive their benefit payments from the agency instead of receiving them via the account, using the following clause or a substantially similar clause: ''You do not have to accept this benefits card. Ask about other ways to receive your benefits.'' Alternatively, an agency may provide a statement that the consumer has several options to receive benefit payments, followed by a list of the options available to the consumer, and directing the consumer to indicate which option the consumer chooses using the following clause or a substantially similar clause: ''You have several options to receive your payments: [list of options available to the consumer]; or this benefits card. Tell the benefits office which option you choose.'' This statement must be located above the information required by § 1005.18(b)(2)(i) through (iv). This statement must appear in a minimum type size of eight points (or 11 pixels) and appear in no larger a type size than what is used for the fee headings required by § 1005.18(b)(2)(i) through (iv).

(ii) *Statement regarding state-required information or other fee discounts and waivers.* An agency may, but is not required to, include a statement in one additional line of text in the short form disclosure directing the consumer to a particular location outside the short form disclosure for information on ways the consumer may access government benefit account funds and balance information for free or for a reduced fee. This statement must be located directly below any statements disclosed pursuant to § 1005.18(b)(3)(i) and (ii), or, if no such statements are disclosed, above the statement required by § 1005.18(b)(2)(x). This statement must appear in the same type size used to disclose variable fee information pursuant to § 1005.18(b)(3)(i) and (ii), or, if none, the same type size used for the information required by § 1005.18(b)(2)(x) through (xiii).

(3) *Form of disclosures.* When a short form disclosure required by paragraph (c) of this section is provided in writing or electronically, the information required by § 1005.18(b)(2)(i) through (ix) shall be provided in the form of a table. Except as provided in § 1005.18(b)(6)(iii)(B), the short form disclosure required by § 1005.18(b)(2) shall be provided in a form substantially similar to Model Form A–10(a) of appendix A of this part. Sample Form A–10(f) in appendix A of this part provides an example of the long form disclosure required by § 1005.18(b)(4) when the agency does not offer multiple service plans.

(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 12 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 24 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)(3) through (5).

(e) *Modified disclosure, limitations on liability, and error resolution 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) *Disclosure of fees and other information.* For government benefit accounts, a government agency shall comply with the disclosure and change-in-terms requirements applicable to prepaid accounts as set forth in § 1005.18(f).

(g) *Government benefit accounts accessible by hybrid prepaid-credit cards.* For government benefit accounts accessible by hybrid prepaid-credit cards as defined in Regulation Z, 12 CFR 1026.61, a government agency shall comply with prohibitions and requirements applicable to prepaid accounts as set forth in § 1005.18(g).

■ 7. Section 1005.17 is amended by revising paragraphs (a)(2) and (3) and adding paragraph (a)(4) to read as follows:

§ 1005.17 Requirements for overdraft services.

(a) * * *

(2) A service that transfers funds from another account held individually or jointly by a consumer, such as a savings account;

(3) A line of credit or other transaction exempt from Regulation Z (12 CFR part 1026) pursuant to 12 CFR 1026.3(d); or

(4) A covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61; or credit extended through a negative balance on the asset feature of the prepaid account that meets the conditions of 12 CFR 1026.61(a)(4).

* * * * *

■ 8. 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 paragraph (b) of this section before a consumer acquires a prepaid account.

(ii) *Disclosures for prepaid accounts acquired in retail locations.* A financial institution is not required to provide the long form disclosures required by paragraph (b)(4) of this section before a consumer acquires a prepaid account in person at a retail location if the following conditions are met:

(A) The prepaid account access device is contained inside the packaging material.

(B) The disclosures required by paragraph (b)(2) of this section are provided on or are visible through an outward-facing, external surface of a prepaid account access device's packaging material.

(C) The disclosures required by paragraph (b)(2) of this section include the information set forth in paragraph (b)(2)(xiii) of this section that allows a consumer to access the information required to be disclosed by paragraph (b)(4) of this section by telephone and via a Web site.

(D) The long form disclosures required by paragraph (b)(4) of this section are provided after the consumer acquires the prepaid account.

(iii) *Disclosures for prepaid accounts acquired orally by telephone.* A financial institution is not required to provide the long form disclosures required by paragraph (b)(4) of this section before a consumer acquires a prepaid account orally by telephone if the following conditions are met:

(A) The financial institution communicates to the consumer orally, before the consumer acquires the prepaid account, that the information required to be disclosed by paragraph (b)(4) of this section is available both by telephone and on a Web site.

(B) The financial institution makes the information required to be disclosed by paragraph (b)(4) of this section available both by telephone and on a Web site.

(C) The long form disclosures required by paragraph (b)(4) of this section are provided after the consumer acquires the prepaid account.

(2) *Short form disclosure content.* In accordance with paragraph (b)(1) of this section, a financial institution shall provide a disclosure setting forth the following fees and information for a prepaid account, as applicable:

(i) *Periodic fee.* The periodic fee charged for holding the prepaid account, assessed on a monthly or other periodic basis, using the term ''Monthly fee,'' ''Annual fee,'' or a substantially similar term.

(ii) *Per purchase fee.* The fee for making a purchase using the prepaid account, using the term ''Per purchase'' or a substantially similar term.

(iii) *ATM withdrawal fees.* Two fees for using an automated teller machine to initiate a withdrawal of cash in the United States from the 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,'' respectively, or substantially similar terms.

(iv) *Cash reload fee.* The fee for reloading cash into the prepaid account using the term ''Cash reload'' or a substantially similar term. The fee disclosed must be the total of all charges from the financial institution and any third parties for a cash reload.

(v) *ATM balance inquiry fees.* Two fees for using an automated teller machine to check the balance of the 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,'' respectively, or substantially similar terms.

(vi) *Customer service fees.* Two fees for calling the financial institution about the prepaid account, both for calling an interactive voice response system and a live customer service agent, using the term ''Customer service'' or a

substantially similar term, and ''automated'' or ''live agent,'' or substantially similar terms, respectively, and ''per call'' or a substantially similar term. When providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(*2*) of this section, disclose only the fee for calling the live agent customer service about the prepaid account, using the term ''Live customer service'' or a substantially similar term and ''per call'' or a substantially similar term.

(vii) *Inactivity fee.* The fee for non-use, dormancy, or inactivity of the prepaid account, using the term ''Inactivity'' or a substantially similar term, as well as the conditions that trigger the financial institution to impose that fee.

(viii) *Statements regarding additional fee types*—(A) *Statement regarding number of additional fee types charged.* A statement disclosing the number of additional fee types the financial institution may charge consumers with respect to the prepaid account, using the following clause or a substantially similar clause: ''We charge [x] other types of fees.'' The number of additional fee types disclosed must reflect the total number of fee types under which the financial institution may charge fees, excluding:

(*1*) Fees required to be disclosed pursuant to paragraphs (b)(2)(i) through (vii) and (b)(5) of this section; and

(*2*) Any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

(B) *Statement directing consumers to disclosure of additional fee types.* If a financial institution makes a disclosure pursuant to paragraph (b)(2)(ix) of this section, a statement directing consumers to that disclosure, located after but on the same line of text as the statement regarding the number of additional fee types required by paragraph (b)(2)(viii)(A) of this section, using the following clause or a substantially similar clause: ''Here are some of them:''.

(ix) *Disclosure of additional fee types*—(A) *Determination of which additional fee types to disclose.* The two fee types that generate the highest revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in paragraphs (b)(2)(ix)(D) and (E) of this section, excluding:

(*1*) Fees required to be disclosed pursuant to paragraphs (b)(2)(i) through (vii) and (b)(5) of this section;

(*2*) Any fee types that generated less than 5 percent of the total revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in paragraphs (b)(2)(ix)(D) and (E) of this section; and

(*3*) Any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

(B) *Disclosure of fewer than two additional fee types.* A financial institution that has only one additional fee type that satisfies the criteria in paragraph (b)(2)(ix)(A) of this section must disclose that one additional fee type; it may, but is not required to, also disclose another additional fee type of its choice. A financial institution that has no additional fee types that satisfy the criteria in paragraph (b)(2)(ix)(A) of this section is not required to make a disclosure under this paragraph (b)(2)(ix); it may, but is not required to, disclose one or two fee types of its choice.

(C) *Fee variations in additional fee types.* If an additional fee type required to be disclosed pursuant to paragraph (b)(2)(ix)(A) of this section has more than two fee variations, or when providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(*2*) of this section, the financial institution must disclose the name of the additional fee type and the highest fee amount in accordance with paragraph (b)(3)(i) of this section. Except when providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(*2*) of this section, if an additional fee type has two fee variations, the financial institution must disclose the name of the additional fee type together with the names of the two fee variations and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section and in accordance with paragraph (b)(7)(ii)(B)(*1*) of this section. If a financial institution only charges one fee under a particular fee type, the financial institution must disclose the name of the additional fee type and the fee amount; it may, but is not required to, disclose also the name of the one fee variation for which the fee amount is charged, in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section, except that the financial institution would disclose only the one fee variation name and fee amount instead of two.

(D) *Timing of initial assessment of additional fee type disclosure*—(*1*) *Existing prepaid account programs as of October 1, 2017.* For a prepaid account program in effect as of October 1, 2017, the financial institution must disclose the additional fee types based on revenue for a 24-month period that begins no earlier than October 1, 2014.

(*2*) *Existing prepaid account programs as of October 1, 2017 with unavailable data.* If a financial institution does not have 24 months of fee revenue data for a particular prepaid account program from which to calculate the additional fee types disclosure in advance of October 1, 2017, the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the 24-month period that begins on October 1, 2017.

(*3*) *New prepaid account programs created on or after October 1, 2017.* For a prepaid account program created on or after October 1, 2017, the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the first 24 months of the program.

(E) *Timing of periodic reassessment and update of additional fee types disclosure*—(*1*) *General.* A financial institution must reassess its additional fee types disclosure periodically as described in paragraph (b)(2)(ix)(E)(*2*) of this section and upon a fee schedule change as described in paragraph (b)(2)(ix)(E)(*3*) of this section. The financial institution must update its additional fee types disclosure if the previous disclosure no longer complies with the requirements of this paragraph (b)(2)(ix).

(*2*) *Periodic reassessment.* A financial institution must reassess whether its previously disclosed additional fee types continue to comply with the requirements of this paragraph (b)(2)(ix) every 24 months based on revenue for the previous 24-month period. The financial institution must complete this reassessment and update its disclosures, if applicable, within three months of the end of the 24-month period, except as provided in the update printing exception in paragraph (b)(2)(ix)(E)(*4*) of this section. A financial institution may, but is not required to, carry out this reassessment and update, if applicable, more frequently than every 24 months, at which time a new 24-month period commences.

(*3*) *Fee schedule change.* If a financial institution revises the fee schedule for a prepaid account program, it must

determine whether it reasonably anticipates that the previously disclosed additional fee types will continue to comply with the requirements of this paragraph (b)(2)(ix) for the 24 months following implementation of the fee schedule change. If the financial institution reasonably anticipates that the previously disclosed additional fee types will not comply with the requirements of this paragraph (b)(2)(ix), it must update the disclosure based on its reasonable anticipation of what those additional fee types will be at the time the fee schedule change goes into effect, except as provided in the update printing exception in paragraph (b)(2)(ix)(E)(*4*) of this section. If an immediate change in terms and conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system as described in § 1005.8(a)(2) and that change affects the prepaid account program's fee schedule, the financial institution must complete its reassessment and update its disclosures, if applicable, within three months of the date it makes the change permanent, except as provided in the update printing exception in paragraph (b)(2)(ix)(E)(*4*) of this section.

(*4*) *Update printing exception.* Notwithstanding the requirements to update additional fee types disclosures in paragraph (b)(2)(ix)(E) of this section, a financial institution is not required to update the listing of additional fee types that are provided on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced prior to a periodic reassessment and update pursuant to paragraph (b)(2)(ix)(E)(*2*) of this section or prior to a fee schedule change pursuant to paragraph (b)(2)(ix)(E)(*3*) of this section.

(x) *Statement regarding overdraft credit features.* If a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, may be offered at any point to a consumer in connection with the prepaid account, a statement that overdraft/credit may be offered, the time period after which it may be offered, and that fees would apply, using the following clause or a substantially similar clause: ''You may be offered overdraft/credit after [x] days. Fees would apply.'' If no such credit feature will be offered at any point to a consumer in connection with the prepaid account, a statement that no overdraft credit feature is offered, using the following clause or a substantially similar clause: ''No overdraft/credit feature.''

(xi) *Statement regarding registration and FDIC or NCUA insurance.* A statement regarding the prepaid account program's eligibility for FDIC deposit insurance or NCUA share insurance, as appropriate, and directing the consumer to register the prepaid account for insurance and other account protections, where applicable, as follows:

(A) *Account is insurance eligible and does not have pre-acquisition customer identification/verification.* If a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the account is opened, using the following clause or a substantially similar clause: ''Register your card for [FDIC insurance eligibility] [NCUA insurance, if eligible,] and other protections.''

(B) *Account is not insurance eligible and does not have pre-acquisition customer identification/verification.* If a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the account is opened, using the following clause or a substantially similar clause: ''Not [FDIC] [NCUA] insured. Register your card for other protections.''

(C) *Account is insurance eligible and has pre-acquisition customer identification/verification.* If a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs for all prepaid accounts within the prepaid program before the account is opened, using the following clause or a substantially similar clause: ''Your funds are [eligible for FDIC insurance] [NCUA insured, if eligible].''

(D) *Account is not insurance eligible and has pre-acquisition customer identification/verification.* If a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs for all prepaid accounts within the prepaid account program before the account is opened, using the following clause or a substantially similar clause: ''Your funds are not [FDIC] [NCUA] insured.''

(E) *No customer identification/verification.* If a prepaid account program is set up such that there is no customer identification and verification process for any prepaid accounts within the prepaid account program, using the following clause or a substantially similar clause: ''Treat this card like cash. Not [FDIC] [NCUA] insured.''

(xii) *Statement regarding CFPB Web site.* A statement directing the consumer to a Web site URL of the Consumer Financial Protection Bureau (*cfpb.gov/prepaid*) for general information about prepaid accounts, using the following clause or a substantially similar clause: ''For general information about prepaid accounts, visit *cfpb.gov/prepaid.*''

(xiii) *Statement regarding information on all fees and services.* A statement directing the consumer to the location of the long form disclosure required by paragraph (b)(4) of this section to find details and conditions for all fees and services. For a financial institution offering prepaid accounts at a retail location pursuant to the retail location exception in paragraph (b)(1)(ii) of this section, this statement must also include a telephone number and a Web site URL that a consumer may use to directly access, respectively, an oral and an electronic version of the long form disclosure required under paragraph (b)(4) of this section. The disclosure required by this paragraph must be made using the following clause or a substantially similar clause: ''Find details and conditions for all fees and services in [location]'' or, for prepaid accounts offered at retail locations pursuant to paragraph (b)(1)(ii) of this section, made using the following clause or a substantially similar clause: ''Find details and conditions for all fees and services inside the package, or call [telephone number] or visit [Web site].'' The Web site URL may not exceed 22 characters and must be meaningfully named. A financial institution may, but is not required to, disclose an SMS code at the end of the statement disclosing the telephone number and Web site URL, if the SMS code can be accommodated on the same line of text as the statement required by this paragraph.

(xiv) *Additional content for payroll card accounts*—(A) *Statement regarding wage or salary payment options.* For payroll card accounts, a statement that the consumer does not have to accept the payroll card account and directing the consumer to ask about other ways to receive wages or salary from the employer instead of receiving them via the payroll card account using the following clause or a substantially similar clause: ''You do not have to accept this payroll card. Ask your employer about other ways to receive your wages.'' Alternatively, a financial institution may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the

consumer chooses using the following clause or a substantially similar clause: ''You have several options to receive your wages: [list of options available to the consumer]; or this payroll card. Tell your employer which option you choose.'' This statement must be located above the information required by paragraphs (b)(2)(i) through (iv).

(B) *Statement regarding state-required information or other fee discounts and waivers.* For payroll card accounts, a financial institution may, but is not required to, include a statement in one additional line of text directing the consumer to a particular location outside the short form disclosure for information on ways the consumer may access payroll card account funds and balance information for free or for a reduced fee. This statement must be located directly below any statements disclosed pursuant to paragraphs (b)(3)(i) and (ii) of this section, or, if no such statements are disclosed, above the statement required by paragraph (b)(2)(x) of this section.

(3) *Short form disclosure of variable fees and third-party fees and prohibition on disclosure of finance charges*—(i) *General disclosure of variable fees.* If the amount of any fee that is required to be disclosed in the short form disclosure pursuant to paragraphs (b)(2)(i) through (vii) and (ix) of this section could vary, a financial institution shall disclose the highest amount it may impose for that fee, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used, using the following clause or a substantially similar clause: ''This fee can be lower depending on how and where this card is used.'' Except as provided in paragraph (b)(3)(ii) of this section, a financial institution must use the same symbol and statement for all fees that could vary. The linked statement must be located above the statement required by paragraph (b)(2)(x) of this section.

(ii) *Disclosure of variable periodic fee.* If the amount of the periodic fee disclosed in the short form disclosure pursuant to paragraph (b)(2)(i) of this section could vary, as an alternative to the disclosure required by paragraph (b)(3)(i) of this section, the financial institution may disclose the highest amount it may impose for the periodic fee, followed by a symbol, such as a dagger, that is different from the symbol the financial institution uses pursuant to paragraph (b)(3)(i) of this section, to indicate that a waiver of the fee or a lower fee might apply, linked to a statement in one additional line of text disclosing the waiver or reduced fee amount and explaining the circumstances under which the fee waiver or reduction may occur. The linked statement must be located directly above or in place of the linked statement required by paragraph (b)(3)(i) of this section, as applicable.

(iii) *Single disclosure for like fees.* As an alternative to the two-tier fee disclosure required by paragraphs (b)(2)(iii), (v), and (vi) of this section and any two-tier fee required by paragraph (b)(2)(ix) of this section, a financial institution may disclose a single fee amount when the amount is the same for both fees.

(iv) *Third-party fees in general.* Except as provided in paragraph (b)(3)(v) of this section, a financial institution may not include any third-party fees in a disclosure made pursuant to paragraph (b)(2) of this section.

(v) *Third-party cash reload fees.* Any third-party fee included in the cash reload fee disclosed in the short form pursuant to paragraph (b)(2)(iv) of this section must be the highest fee known by the financial institution at the time it prints, or otherwise prepares, the short form disclosure required by paragraph (b)(2) of this section. A financial institution is not required to revise its short form disclosure to reflect a cash reload fee change by a third party until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the short form disclosure.

(vi) *Prohibition on disclosure of finance charges.* A financial institution may not include in a disclosure made pursuant to paragraphs (b)(2)(i) through (ix) of this section any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

(4) *Long form disclosure content.* In accordance with paragraph (b)(1) of this section, a financial institution shall provide a disclosure setting forth the following fees and information for a prepaid account, as applicable:

(i) *Title for long form disclosure.* A heading stating the name of the prepaid account program and that the long form disclosure contains a list of all fees for that particular prepaid account program.

(ii) *Fees.* All fees that may be imposed in connection with a prepaid account. For each fee, the financial institution must disclose the amount of the fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. A financial institution may not use any symbols, such as an asterisk, to explain conditions under which any fee may be imposed. A financial institution may, but is not required to, include in the long form disclosure any service or feature it provides or offers at no charge to the consumer. The financial institution must also disclose any third-party fee amounts known to the financial institution that may apply. For any such third-party fee disclosed, the financial institution may, but is not required to, include either or both a statement that the fee is accurate as of or through a specific date or that the third-party fee is subject to change. If a third-party fee may apply but the amount of that fee is not known by the financial institution, it must include a statement indicating that the third-party fee may apply without specifying the fee amount. A financial institution is not required to revise the long form disclosure required by paragraph (b)(4) of this section to reflect a fee change by a third party until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure.

(iii) *Statement regarding registration and FDIC or NCUA insurance.* The statement required by paragraph (b)(2)(xi) of this section, together with an explanation of FDIC or NCUA insurance coverage and the benefit of such coverage or the consequence of the lack of such coverage, as applicable.

(iv) *Statement regarding overdraft credit features.* The statement required by paragraph (b)(2)(x) of this section.

(v) *Statement regarding financial institution contact information.* A statement directing the consumer to a telephone number, mailing address, and Web site URL 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 financial institution when the consumer believes that an unauthorized electronic fund transfer occurred as required by § 1005.7(b)(2) and paragraph (d)(1)(ii) of this section.

(vi) *Statement regarding CFPB Web site and telephone number.* A statement directing the consumer to a Web site URL of the Consumer Financial Protection Bureau (*cfpb.gov/prepaid*) for general information about prepaid accounts, and a statement directing the consumer to a Consumer Financial

Protection Bureau telephone number (1–855–411–2372) and Web site URL (*cfpb.gov/complaint*) to submit a complaint about a prepaid account, using the following clause or a substantially similar clause: ''For general information about prepaid accounts, visit *cfpb.gov/prepaid*. If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1–855–411–2372 or visit *cfpb.gov/complaint*.''

(vii) *Regulation Z disclosures for overdraft credit features.* The disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), in accordance with the requirements for such disclosures in 12 CFR 1026.60, if, at any point, a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61, may be offered in connection with the prepaid account. A financial institution may, but is not required to, include above the Regulation Z disclosures required by this paragraph a heading and other explanatory information introducing the overdraft credit feature. A financial institution is not required to revise the disclosure required by this paragraph to reflect a change in the fees or other terms disclosed therein until such time as the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure.

(5) *Disclosure requirements outside the short form disclosure.* At the time a financial institution provides the short form disclosure, it must also disclose the following information: the name of the financial institution; the name of the prepaid account program; the purchase price for the prepaid account, if any; and the fee for activating the prepaid account, if any. In a setting other than in a retail location, this information must be disclosed in close proximity to the short form. In a retail location, this information, other than the purchase price, must be disclosed on the exterior of the access device's packaging material. In a retail location, the purchase price must be disclosed either on the exterior of or in close proximity to the prepaid account access device's packaging material.

(6) *Form of pre-acquisition disclosures*—(i) *General*—(A) *Written disclosures.* Except as provided in paragraphs (b)(6)(i)(B) and (C) of this section, disclosures required by paragraph (b) of this section must be in writing.

(B) *Electronic disclosures.* The disclosures required by paragraph (b) of this section must be provided in electronic form when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and must be viewable across all screen sizes. The long form disclosure must be provided electronically through a Web site when a financial institution is offering prepaid accounts at a retail location pursuant to the retail location exception in paragraph (b)(1)(ii) of this section. Electronic disclosures must be provided in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account, in a responsive form, and using machine-readable text that is accessible via Web browsers or mobile applications, as applicable, and via screen readers. Electronic disclosures provided pursuant to paragraph (b) of this section 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.*).

(C) *Oral disclosures.* Disclosures required by paragraphs (b)(2) and (5) of this section must be provided orally when a consumer acquires a prepaid account orally by telephone as described in paragraph (b)(1)(iii) of this section. For prepaid accounts acquired in retail locations or orally by telephone, disclosures required by paragraph (b)(4) of this section provided by telephone pursuant to paragraph (b)(1)(ii)(B) or (b)(1)(iii)(B) of this section also must be made orally.

(ii) *Retainable form.* Pursuant to § 1005.4(a)(1), disclosures required by paragraph (b) of this section must be made in a form that a consumer may keep, except for disclosures provided orally pursuant to paragraphs (b)(1)(ii) or (iii) of this section, long form disclosures provided via SMS as permitted by paragraph (b)(2)(xiii) of this section for a prepaid account sold at retail locations pursuant to the retail location exception in paragraph (b)(1)(ii) of this section, and the disclosure of a purchase price pursuant to paragraph (b)(5) of this section that is not disclosed on the exterior of the packaging material for a prepaid account sold at a retail location pursuant to the retail location exception in paragraph (b)(1)(ii) of this section.

(iii) *Tabular format*—(A) *General.* When a short form disclosure is provided in writing or electronically, the information required by paragraphs (b)(2)(i) through (ix) of this section shall be provided in the form of a table. Except as provided in paragraph (b)(6)(iii)(B) of this section, the short form disclosures required by paragraph (b)(2) of this section shall be provided in a form substantially similar to Model Forms A–10(a) through (d) in appendix A of this part, as applicable. When a long form disclosure is provided in writing or electronically, the information required by paragraph (b)(4)(ii) of this section shall be provided in the form of a table. Sample Form A–10(f) in appendix A of this part provides an example of the long form disclosure required by paragraph (b)(4) of this section when the financial institution does not offer multiple service plans.

(B) *Multiple service plans*—(*1*) *Short form disclosure for default service plan.* When a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, the information required by paragraphs (b)(2)(i) through (ix) of this section may be provided in the tabular format described in paragraph (b)(6)(iii)(A) of this section for the service plan in which a consumer is initially enrolled by default upon acquiring the prepaid account.

(*2*) *Short form disclosure for multiple service plans.* As an alternative to disclosing the default service plan pursuant to paragraph (b)(6)(iii)(B)(*1*) of this section, when a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, fee disclosures required by paragraphs (b)(2)(i) through (vii) and (ix) of this section may be provided in the form of a table with separate columns for each service plan, in a form substantially similar to Model Form A–10(e) in appendix A of this part. Column headings must describe each service plan included in the table, using the terms ''Pay-as-you-go plan,'' ''Monthly plan,'' ''Annual plan,'' or substantially similar terms; or, for multiple service plans offering preferred rates or fees for the prepaid accounts of consumers who also use another non-prepaid service, column headings must describe each service plan included in the table for the preferred- and non-preferred service plans, as applicable.

(*3*) *Long form disclosure.* The information in the long form disclosure required by paragraph (b)(4)(ii) of this section must be presented in the form of a table for all service plans.

(7) *Specific formatting requirements for pre-acquisition disclosures*—(i) *Grouping*—(A) *Short form disclosure.* The information required in the short form disclosure by paragraphs (b)(2)(i) through (iv) of this section must be grouped together and provided in that order. The information required by paragraphs (b)(2)(v) through (ix) of this section must be generally grouped

together and provided in that order. The information required by paragraphs (b)(3)(i) and (ii) of this section, as applicable, must be generally grouped together and in the location described by paragraphs (b)(3)(i) and (ii) of this section. The information required by paragraphs (b)(2)(x) through (xiii) of this section must be generally grouped together and provided in that order. The statement regarding wage or salary payment options for payroll card accounts required by paragraph (b)(2)(xiv)(A) of this section must be located above the information required by paragraphs (b)(2)(i) through (iv) of this section, as described in paragraph (b)(2)(xiv)(A) of this section. The statement regarding state-required information or other fee discounts or waivers permitted by paragraph (b)(2)(xiv)(B) of this section, when applicable, must appear in the location described by paragraph (b)(2)(xiv)(B) of this section.

(B) *Long form disclosure.* The information required by paragraph (b)(4)(i) of this section must be located in the first line of the long form disclosure. The information required by paragraph (b)(4)(ii) of this section must be generally grouped together and organized under subheadings by the categories of function for which a financial institution may impose the fee. Text describing the conditions under which a fee may be imposed must appear in the table required by paragraph (b)(6)(iii)(A) of this section in close proximity to the fee amount. The information in the long form disclosure required by paragraphs (b)(4)(iii) through (vi) of this section must be generally grouped together, provided in that order, and appear below the information required by paragraph (b)(4)(ii) of this section. If, pursuant to § 1005.18(b)(4)(vii), the financial institution includes the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), such disclosures must appear below the disclosures required by paragraph (b)(4)(vi) of this section.

(C) *Multiple service plan disclosure.* When providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(*2*) of this section, in lieu of the requirements in paragraph (b)(7)(i)(A) of this section for grouping of the disclosures required by paragraphs (b)(2)(i) through (iv) and (v) through (ix) of this section, the information required by paragraphs (b)(2)(i) through (ix) of this section must be grouped together and provided in that order.

(ii) *Prominence and size*—(A) *General.* All text used to disclose information in the short form or in the long form disclosure pursuant to paragraphs (b)(2), (b)(3)(i) and (ii), and (b)(4) of this section must be in a single, easy-to-read type that is all black or one color and printed on a background that provides a clear contrast.

(B) *Short form disclosure*—(*1*) *Fees and other information.* The information required in the short form disclosure by paragraphs (b)(2)(i) through (iv) of this section must appear as follows: Fee amounts in bold-faced type; single fee amounts in a minimum type size of 15 points (or 21 pixels); two-tier fee amounts for ATM withdrawal in a minimum type size of 11 points (or 16 pixels) and in no larger a type size than what is used for the single fee amounts; and fee headings in a minimum type size of eight points (or 11 pixels) and in no larger a type size than what is used for the single fee amounts. The information required by paragraphs (b)(2)(v) through (ix) of this section must appear in a minimum type size of eight points (or 11 pixels) and appear in the same or a smaller type size than what is used for the fee headings required by paragraphs (b)(2)(i) through (iv) of this section. The information required by paragraphs (b)(2)(x) through (xiii) of this section must appear in a minimum type size of seven points (or nine pixels) and appear in no larger a type size than what is used for the information required to be disclosed by paragraphs (b)(2)(v) through (ix) of this section. Additionally, the statements disclosed pursuant to paragraphs (b)(2)(viii)(A) and (b)(2)(x) of this section and the telephone number and URL disclosed pursuant to paragraph (b)(2)(xiii) of this section, where applicable, must appear in bold-faced type. The following information must appear in a minimum type size of six points (or eight pixels) and appear in no larger a type size that what is used for the information required by paragraphs (b)(2)(x) through (xiii) of this section: text used to distinguish each of the two-tier fees pursuant to paragraphs (b)(2)(iii), (v), (vi), and (ix) of this section; text used to explain that the fee required by paragraph (b)(2)(vi) of this section applies ''per call,'' where applicable; and text used to explain the conditions that trigger an inactivity fee and that the fee applies monthly or for the applicable time period, pursuant to paragraph (b)(2)(vii) of this section.

(*2*) *Variable fees.* The symbols and corresponding statements regarding variable fees disclosed in the short form pursuant to paragraphs (b)(3)(i) and (ii) of this section, when applicable, must appear in a minimum type size of seven points (or nine pixels) and appear in no larger a type size than what is used for the information required by paragraphs (b)(2)(x) through (xiii) of this section. A symbol required next to the fee amount pursuant to paragraphs (b)(3)(i) and (ii) of this section must appear in the same type size or pixel size as what is used for the corresponding fee amount.

(*3*) *Payroll card account additional content.* The statement regarding wage or salary payment options for payroll card accounts required by paragraph (b)(2)(xiv)(A) of this section, when applicable, must appear in a minimum type size of eight points (or 11 pixels) and appear in no larger a type size than what is used for the fee headings required by paragraphs (b)(2)(i) through (iv) of this section. The statement regarding state-required information and other fee discounts or waivers permitted by paragraph (b)(2)(xiv)(B) of this section must appear in the same type size used to disclose variable fee information pursuant to paragraph (b)(3)(i) and (ii) of this section, or, if none, the same type size used for the information required by paragraphs (b)(2)(x) through (xiii) of this section.

(C) *Long form disclosure.* Long form disclosures required by paragraph (b)(4) of this section must appear in a minimum type size of eight points (or 11 pixels).

(D) *Multiple service plan short form disclosure.* When providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(*2*) of this section, the fee headings required by paragraphs (b)(2)(i) through (iv) of this section must appear in bold-faced type. The information required by paragraphs (b)(2)(i) through (xiii) of this section must appear in a minimum type size of seven points (or nine pixels), except the following must appear in a minimum type size of six points (or eight pixels) and appear in no larger a type size than what is used for the information required by paragraphs (b)(2)(i) through (xiii) of this section: Text used to distinguish each of the two-tier fees required by paragraphs (b)(2)(iii) and (v) of this section; text used to explain that the fee required by paragraph (b)(2)(vi) of this section applies ''per call,'' where applicable; text used to explain the conditions that trigger an inactivity fee pursuant to paragraph (b)(2)(vii) of this section; and text used to distinguish that fees required by paragraphs (b)(2)(i) and (vii) of this section apply monthly or for the applicable time period.

(iii) *Segregation.* Short form and long form disclosures required by paragraphs (b)(2) and (4) of this section must be segregated from other information and must contain only information that is required or permitted for those

disclosures by paragraph (b) of this section.

(8) *Terminology of pre-acquisition disclosures.* Fee names and other terms must be used consistently within and across the disclosures required by paragraph (b) of this section.

(9) *Prepaid accounts acquired in foreign languages*—(i) *General.* A financial institution must provide the pre-acquisition disclosures required by paragraph (b) of this section in a foreign language, if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in the following circumstances:

(A) The financial institution principally uses a foreign language on the prepaid account packaging material;

(B) The financial institution principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically; or

(C) The financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language.

(ii) *Long form disclosures in English upon request.* A financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to paragraph (b)(9)(i) of this section must also provide the information required to be disclosed in its pre-acquisition long form disclosure pursuant to paragraph (b)(4) of this section in English upon a consumer's request and on any part of the Web site where it discloses this information in a foreign language.

(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 financial 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 12 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 24 months preceding the date the financial institution receives the consumer's request.

(2) *Periodic statement alternative for unverified prepaid accounts.* For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to provide a written history of the consumer's account transactions pursuant to paragraph (c)(1)(iii) of this section for any prepaid account for which the financial institution has not completed its consumer identification and verification process as described in paragraph (e)(3)(i)(A) through (C) of this section.

(3) *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).

(4) *Inclusion of all fees charged.* A financial institution must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on any periodic statement provided pursuant to § 1005.9(b) and on any history of account transactions provided or made available by the financial institution.

(5) *Summary totals of fees.* A financial institution must display a summary total of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date on any periodic statement provided pursuant to § 1005.9(b) and on any history of account transactions provided or made available by the financial institution.

(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 transaction history, such as the address of a Web site, and a summary of the consumer's right to receive a written account transaction 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 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 account transaction 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 account transaction 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 account transaction 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) *Error resolution for unverified accounts*—(i) *Provisional credit for errors on accounts that have not been verified.* As set forth in § 1005.11(c)(2)(i)(C), for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (c)(3)(ii), as applicable, to investigate and determine whether an error occurred without provisionally crediting a consumer's account if the financial institution has not completed its consumer identification and verification process with respect to that prepaid account.

(ii) For purposes of paragraph (e)(3)(i) of this section, a financial institution has not completed its consumer identification and verification process where:

(A) It has not concluded its consumer identification and verification process, provided the financial institution has disclosed to the consumer the risks of not registering the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A–7 of this part.

(B) It has concluded its consumer identification and verification process, but could not verify the identity of the consumer, provided the financial institution has disclosed to the consumer the risks of not registering the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A–7 of this part; or

(C) It does not have a consumer identification and verification process by which the consumer can register the prepaid account.

(iii) *Resolution of pre-verification errors.* If a consumer's account has been verified, the financial institution must comply with the provisions set forth in § 1005.11(c) in full with respect to any errors that satisfy the timing requirements of § 1005.11, or the modified timing requirements in this paragraph (e), as applicable, including with respect to errors that occurred prior to verification.

(A) Notwithstanding paragraph (e)(3)(iii) of this section, if, at the time the financial institution was required to provisionally credit the account (pursuant to § 1005.11(c)(2)(i) or (c)(3)(ii), as applicable), the financial institution has not yet completed its identification and verification process with respect to that account, the financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (c)(3)(ii), as applicable, to investigate and determine whether an error occurred without provisionally crediting the account.

(f) *Disclosure of fees and other information*—(1) *Initial disclosure of fees and other information.* A financial institution must include, as part of the initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed in its pre-acquisition long form disclosure pursuant to paragraph (b)(4) of this section.

(2) *Change-in-terms notice.* The change-in-terms notice provisions in § 1005.8(a) apply to any change in a term or condition that is required to be disclosed under § 1005.7 or paragraph (f)(1) of this section. If a financial institution discloses the amount of a third-party fee in its pre-acquisition long form disclosure pursuant to paragraph (b)(4)(ii) of this section and initial disclosures pursuant to paragraph (f)(1) of this section, the financial institution is not required to provide a change-in-terms notice solely to reflect a change in that fee amount imposed by the third party. If a financial institution provides pursuant to paragraph (f)(1) of this section the Regulation Z disclosures required by paragraph (b)(4)(vii) of this section for an overdraft credit feature, the financial institution is not required to provide a change-in-terms notice solely to reflect a change in the fees or other terms disclosed therein.

(3) *Disclosures on prepaid account access devices.* The name of the financial institution and the Web site URL 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 on the Web site, mobile application, or other entry point a consumer must visit to access the prepaid account electronically.

(g) *Prepaid accounts accessible by hybrid prepaid-credit cards*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, with respect to a prepaid account program where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by Regulation Z, 12 CFR 1026.61, a financial institution must provide to any prepaid account without a covered separate credit feature the same account terms, conditions, and features that it provides on prepaid accounts in the same prepaid account program that have such a credit feature.

(2) *Exception for higher fees or charges.* A financial institution is not prohibited under paragraph (g)(1) of this section from imposing a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge that it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature.

(h) *Effective date and special transition rules for disclosure provisions*—(1) *Effective date generally.* Except as provided in paragraphs (h)(2) and (3) of this section, the requirements of this subpart, as modified by this section, apply to prepaid accounts as defined in § 1005.2(b)(3), including government benefit accounts subject to § 1005.15, beginning October 1, 2017.

(2) *Early disclosures*—(i) *Exception for disclosures on existing prepaid account access devices and prepaid account packaging materials.* The disclosure requirements of this subpart, as modified by this section, shall not apply to any disclosures that are provided, or that would otherwise be required to be provided, on prepaid account access devices, or on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017.

(ii) *Disclosures for prepaid accounts acquired on or after October 1, 2017.* This paragraph applies to prepaid accounts acquired by consumers on or after October 1, 2017 via packaging materials that were manufactured, printed, or otherwise produced prior to October 1, 2017.

(A) *Notices of certain changes.* If a financial institution has changed a prepaid account's terms and conditions as a result of paragraph (h)(1) of this section taking effect such that a change-in-terms notice would have been

required under § 1005.8(a) or paragraph (f)(2) of this section for existing customers, the financial institution must provide to the consumer a notice of the change within 30 days of obtaining the consumer's contact information.

(B) *Initial disclosures.* The financial institution must mail or deliver to the consumer initial disclosures pursuant to § 1005.7 and paragraph (f)(1) of this section that have been updated as a result of paragraph (h)(1) of this section taking effect, within 30 days of obtaining the consumer's contact information.

(iii) *Disclosures for prepaid accounts acquired before October 1, 2017.* This paragraph applies to prepaid accounts acquired by consumers before October 1, 2017. If a financial institution has changed a prepaid account's terms and conditions as a result of paragraph (h)(1) of this section taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or paragraph (f)(2) of this section for existing customers, the financial institution must provide to the consumer a notice of the change at least 21 days in advance of the change becoming effective, provided the financial institution has the consumer's contact information. If the financial institution obtains the consumer's contact information less than 30 days in advance of the change becoming effective or after it has become effective, the financial institution is permitted instead to notify the consumer of the change in accordance with the timing requirements set forth in paragraph (h)(2)(ii)(A) of this section.

(iv) *Method of providing notice to consumers.* With respect to prepaid accounts governed by paragraph (h)(2)(ii) or (iii) of this section, if a financial institution has not obtained a consumer's consent to provide disclosures in electronic form pursuant to the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*), or is not otherwise already mailing or delivering to the consumer written account-related communications within the respective time periods specified in paragraphs (h)(2)(ii) or (iii) of this section, the financial institution may provide to the consumer a notice of a change in terms and conditions pursuant to paragraph (h)(2)(ii) or (iii) of this section or required or voluntary updated initial disclosures as a result of paragraph (h)(1) of this section taking effect in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

(3) *Account information not available on October 1, 2017*—(i) *Electronic and written account transaction history.* If, on October 1, 2017, a financial institution does not have readily accessible the data necessary to make available 12 months of electronic account transaction history pursuant to paragraph (c)(1)(ii) of this section or to provide 24 months of written account transaction history upon request pursuant to paragraph (c)(1)(iii) of this section, the financial institution may make available or provide such histories using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with the requirements set forth in paragraphs (c)(1)(ii) and (iii) of this section.

(ii) *Summary totals of fees.* If, on October 1, 2017, the financial institution does not have readily accessible the data necessary to calculate the summary totals of the amount of all fees assessed by the financial institution on the consumer's prepaid account for the prior calendar month and for the calendar year to date pursuant to paragraph (c)(5) of this section, the financial institution may display the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by paragraph (c)(5) of this section.

■ 9. Section 1005.19 is added 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 short form disclosure for the prepaid account pursuant to § 1005.18(b)(2) and the fee information and statements required to be disclosed in the pre-acquisition long form disclosure for the prepaid account pursuant to § 1005.18(b)(4).

(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'' an agreement if the issuer markets, solicits applications for, or otherwise makes available a prepaid account that would be subject to that agreement, regardless of whether the issuer offers the prepaid account to the general public.

(6) *Offers to the general public.* For purposes of this section, an issuer ''offers to the general public'' an agreement if the issuer markets, solicits applications for, or otherwise makes available to the general public a prepaid account that would be subject to that agreement.

(7) *Open account.* For purposes of this section, a prepaid account is an ''open account'' or ''open prepaid account'' if: There is an outstanding balance in the account; the consumer can load funds to the account even if the account does not currently hold a balance; or the consumer can access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, in connection with the 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.''

(8) *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) *Submissions on a rolling basis.* An issuer must make submissions of prepaid account agreements to the Bureau on a rolling basis, in the form and manner specified by the Bureau. Rolling submissions must be sent to the Bureau no later than 30 days after an issuer offers, amends, or ceases to offer any prepaid account agreement as described in paragraphs (b)(1)(ii) through (iv) of this section. 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), the effective date of the prepaid account agreement, the name of the program manager, if any, and the names of other relevant parties, if applicable (such as the employer for a

payroll card program or the agency for a government benefit program);

(ii) Any prepaid account agreement offered by the issuer that has not been previously submitted to the Bureau;

(iii) Any prepaid account agreement previously submitted to the Bureau that has been amended, 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), (b)(4)(ii), and (b)(5)(ii) of this section.

(2) *Amended agreements.* If a prepaid account agreement previously submitted to the Bureau is amended, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change comes effective.

(3) *Withdrawal of agreements no longer offered.* If an issuer no longer offers a prepaid account agreement that was previously submitted to the Bureau, the issuer must notify the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the issuer ceases to offer the agreement, that it is withdrawing the agreement.

(4) *De minimis exception.* (i) An issuer is not required to submit any prepaid account agreements to the Bureau if the issuer has fewer than 3,000 open prepaid accounts. If the issuer has 3,000 or more open prepaid accounts as of the last day of the calendar quarter, the issuer must submit to the Bureau its prepaid account agreements no later than 30 days after the last day of that calendar quarter.

(ii) 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 submissions to the Bureau on a rolling basis until the issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau.

(5) *Product testing exception.* (i) An issuer is not required to submit a prepaid account agreement to the Bureau if the agreement meets the criteria set forth in paragraphs (b)(5)(i)(A) through (C) of this section. If the agreement fails to meet the criteria set forth in paragraphs (b)(5)(i)(A) through (C) of this section as of the last day of the calendar quarter, the issuer must submit to the Bureau that prepaid account agreement no later than 30 days after the last day of that calendar quarter. An agreement qualifies for the product testing exception if 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 other than in connection with such a product test.

(ii) If an agreement that did not previously qualify for the product testing exception newly qualifies for the exception, the issuer must continue to make submissions to the Bureau on a rolling basis with respect to that agreement until the issuer notifies the Bureau that the issuer is withdrawing the agreement.

(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 currently in effect.

(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.* An issuer 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.

(c) *Posting of agreements offered to the general public.* (1) An issuer must post and maintain on its publicly available Web site any prepaid account agreements offered to the general public 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 set forth in paragraph (b)(6) of this section.

(3) The issuer must post and update the agreements posted on its Web site pursuant to this paragraph (c) as frequently as the issuer is required to submit new or amended agreements to the Bureau pursuant to paragraph (b)(2) of this section.

(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 to the public and must be accessible without submission of personally identifiable information.

(d) *Agreements for all open accounts*—(1) *Availability of an individual consumer's prepaid account agreement.* With respect to any open prepaid account, 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 set forth 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 updated as frequently as the issuer is required to submit amended agreements to the Bureau pursuant to paragraph (b)(2) of this section. Agreements provided upon consumer request pursuant to paragraph (d)(1)(ii) of this section must be accurate as of the date the agreement is sent 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.*).

(f) *Effective date*—(1) *Effective date generally.* Except as provided in paragraph (f)(2) of this section, the requirements of this section apply to prepaid accounts beginning on October 1, 2017.

(2) *Delayed effective date for the agreement submission requirement.* The requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to paragraph (b) of this section is delayed until October 1, 2018. An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018.

(3) *Requirements to post and provide consumers agreements.* Nothing in paragraph (f)(2) of this section shall affect the requirements to post prepaid account agreements on an issuer's Web site pursuant to paragraphs (c) and (d) of this section or the requirement to provide a copy of the consumer's agreement to the consumer upon request pursuant to paragraph (d) of this section.

Subpart B—Requirements for Remittance Transfers

■ 10. Section 1005.32 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 1005.32 Estimates.

(a) * * *

(1) * * *

(iii) The remittance transfer is sent from the sender's account with the institution; provided however, for the purposes of this paragraph, a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.

* * * * *

■ 11. In Appendix A to part 1005:

■ a. In the table of contents:

■ i. The entries for A–5 and A–7 are revised.

■ ii. Entries for A–10(a) through A–10(f) are added.

■ iii. The entry for reserved A–10 through A–30 is revised to A–11 through A–29.

■ b. Model Clauses A–5 and A–7 are revised.

■ c. Model Forms A–10(a) through (f) are added.

■ d. Model Forms A–11 through A–29 are reserved.

The additions and revisions read as follows:

Appendix A to Part 1005—Model Disclosure Clauses and Forms

Table of Contents

* * * * *

A–5—Model Clauses for Government Agencies (§ 1005.15(e)(1) and (2))

* * * * *

A–7—Model Clauses for Financial Institutions Offering Prepaid Accounts (§ 1005.18(d) and (e)(3))

* * * * *

A–10(a)—Model Form for Short Form Disclosures for Government Benefit Accounts (§§ 1005.15(c) and 1005.18(b)(2), (3), (6), and (7))

A–10(b)—Model Form for Short Form Disclosures for Payroll Card Accounts (§ 1005.18(b)(2), (3), (6), and (7))

A–10(c)—Model Form for Short Form Disclosures for Prepaid Accounts, Example 1 (§ 1005.18(b)(2), (3), (6), and (7))

A–10(d)—Model Form for Short Form Disclosures for Prepaid Accounts, Example 2 (§ 1005.18(b)(2), (3), (6), and (7))

A–10(e)—Model Form for Short Form Disclosures for Prepaid Accounts with Multiple Service Plans (§ 1005.18(b)(2), (3), (6), and (7))

A–10(f)—Sample Form for Long Form Disclosures for Prepaid Accounts (§ 1005.18(b)(4), (6), and (7))

A–11 through A–29 [Reserved]

* * * * *

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 a 12-month history of account transactions, is also available online at [Internet address].

You also have the right to obtain at least 24 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 [address] [or email us at [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 a 12-month history of account transactions, is also available online at [Internet address].

[For accounts that are or can be registered:] [If your account is registered with us,] You also have the right to obtain at least 24 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, [and your account is registered with us,] 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. [Keep reading to learn more about how to register your card.]

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. Unless you register your account, we may not credit your account in the amount you think is in error until we complete our investigation. 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.

BILLING CODE 4810–AM–P

A-10(A)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR GOVERNMENT BENEFIT ACCOUNTS (§§ 1005.15(C) AND 1005.18(B)(2), (3), (6), AND (7))

You have several options to receive your payments: direct deposit to your bank account; direct deposit to your own prepaid account; or this benefits card. Tell the benefits office which option you choose.

Monthly fee	Per purchase	ATM withdrawal	Cash reload
$0	**$0**	**$0** in-network **$1.95*** out-of-network	**N/A**

ATM balance inquiry (in-network or out-of-network)	$0 or $1.95*
Customer service (automated or live agent)	$0 or $1.95 per call
Inactivity	$0

We charge 4 other types of fees. Here are some of them:

[Additional fee type]	$0.50 or $1.00
[Additional fee type]	$3.00

* This fee can be lower depending on how and where this card is used.
[See [location] for free ways to access your funds and balance information.]

No overdraft/credit feature.
Your funds are eligible for FDIC insurance.

For general information about prepaid accounts, visit *cfpb.gov/prepaid*.
Find details and conditions for all fees and services in the cardholder agreement.

A-10(B)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR PAYROLL CARD ACCOUNTS

(§ 1005.18(B)(2), (3), (6), AND (7))

You do not have to accept this payroll card.
Ask your employer about other ways to receive your wages.

Monthly fee	Per purchase	ATM withdrawal	Cash reload
$0	**$0**	**$0** in-network **$1.95*** out-of-network	**N/A**

ATM balance inquiry (in-network or out-of-network)	$0 or $1.95*
Customer service (automated or live agent)	$0 or $1.95 per call
Inactivity	$0

We charge 4 other types of fees. Here are some of them:

[Additional fee type]	$1.00*
[Additional fee type]	$3.00

* This fee can be lower depending on how and where this card is used.
[See [location] for free ways to access your funds and balance information.]

No overdraft/credit feature.
Your funds are eligible for FDIC insurance.

For general information about prepaid accounts, visit *cfpb.gov/prepaid*.
Find details and conditions for all fees and services in the cardholder agreement.

A-10(C)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR PREPAID ACCOUNTS, EXAMPLE 1

(§ 1005.18(B)(2), (3), (6), AND (7))

Monthly fee	Per purchase	ATM withdrawal	Cash reload
$5.99†	**$0**	**$0** in-network **$1.99** out-of-network	**$3.99***

ATM balance inquiry (in-network or out-of-network)	$0 or $0.50
Customer service (automated or live agent)	$0 or $0.50* per call
Inactivity (after 12 months with no transactions)	$1.00 per month

We charge 4 other types of fees. Here are some of them:

[Additional fee type]	$0.50 or $1.00
[Additional fee type]	$3.00

† No monthly fee with direct deposit or 30 transactions per month.
* This fee can be lower depending on how and where this card is used.

You may be offered overdraft/credit after 30 days. Fees would apply.
Register your card for FDIC insurance eligibility and other protections.

For general information about prepaid accounts, visit *cfpb.gov/prepaid*.
Find details and conditions for all fees and services inside the package, or call **800-234-5678** or visit ***xyz.com/prepaid***.

A-10(D)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR PREPAID ACCOUNTS, EXAMPLE 2

(§ 1005.18(B)(2), (3), (6), AND (7))

Monthly fee	Per purchase	ATM withdrawal	Cash reload
$5.99*	**$0**	**$0** in-network **$1.99** out-of-network	**$3.99***

ATM balance inquiry (in-network or out-of-network)	$0 or $0.50
Customer service (automated or live agent)	$0 or $0.50* per call
Inactivity (after 12 months with no transactions)	$1.00 per month

We charge 4 other types of fees. Here are some of them:

[Additional fee type]	$1.00*
[Additional fee type]	$3.00

* This fee can be lower depending on how and where this card is used.

No overdraft/credit feature.
Not FDIC insured. Register your card for other protections.

For general information about prepaid accounts, visit *cfpb.gov/prepaid*.
Find details and conditions for all fees and services inside the package, or call **800-234-5678** or visit ***xyz.com/prepaid***.

A-10(E)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR PREPAID ACCOUNTS WITH MULTIPLE SERVICE PLANS (§ 1005.18(B)(2), (3), (6), AND (7))

	Pay-as-you-go plan	Monthly plan	Annual plan
Plan fee	$0	$5.99† per mo.	$39.99 per yr.
Per purchase	$0.25	$0	$0
ATM withdrawal (in-net.)	$0	$0	$0
ATM withdrawal (out-net.)	$2.50	$1.99	$1.99
Cash reload	$4.99*	$4.99*	$4.99*
ATM balance inquiry (in-net.)	$0.50	$0.50	$0.50
ATM balance inquiry (out-net.)	$1.00	$1.00	$1.00
Live customer service (per call)	$1.50	$0.50	$0.50
Inactivity (after 12 mo. w/ no trans.)	$2.50 per mo.	$2.50 per mo.	$2.50 per mo.
We charge 4 other types of fees. Here are some of them:			
[Additional fee type]	$1.00*	$1.00*	$1.00*
[Additional fee type]	$3.00	$3.00	$3.00

† $1.00 monthly fee with direct deposit.
* This fee can be lower depending on how and where this card is used.

No overdraft/credit feature.
Not FDIC insured. Register your card for other protections.

For general information about prepaid accounts, visit *cfpb.gov/prepaid*. Find details and conditions for all fees and services inside the package, or call **800-234-5678** or visit ***xyz.com/prepaid***.

A-10(F)—SAMPLE FORM FOR LONG FORM DISCLOSURES FOR PREPAID ACCOUNTS

(§ 1005.18(B)(4), (6), AND (7))

List of all fees for XYZ Prepaid Card

All fees	Amount	Details
Get started		
Card purchase	$3.95	
Monthly usage		
Monthly fee	$5.99	Monthly fee is waived in any month in which you receive a direct deposit or conduct at least 30 transactions.
Add money		
Direct deposit	$0.50	
Cash reload	$3.99	Fees of up to $3.99 may apply when reloading your card at XYZ reload agents. Locations may be found at *xyzbank.com/prepaid/reloads*.
Spend money		
Bill payment (regular delivery)	$0.50	Bill pay available when you log in to your account at *xyzbank.com/prepaid* or using the XYZ Bank mobile app. Regular bill pay transactions will be completed within 3 business days for electronic payments and within approximately 7 days if we have to mail a paper check to pay your bill.
Bill payment (expedited delivery)	$1.00	Bill pay available when you log in to your account at *xyzbank.com/prepaid* or using the XYZ Bank mobile app. Expedited bill pay transactions will be completed within 1 business day. Electronic payments only.
Get cash		
ATM withdrawal (in-network)	$0	"In-network" refers to the XYZ Bank ATM Network. Locations can be found at *xyzbank.com/ATMs*.
ATM withdrawal (out-of-network)	$1.99	This is our fee. We will not charge you this fee for your first 3 out-of-network ATM withdrawals each month. "Out-of-network" refers to all the ATMs outside of the XYZ Bank ATM Network. You may also be charged a fee by the ATM operator, even if you do not complete a transaction.
Information		
Customer service (automated)	$0	No fee for calling our automated customer service line, including for balance inquiries.
Customer service (live agent)	$0.50	Per call. First 3 calls per month are free.
ATM balance inquiry (in-network)	$0	"In-network" refers to the XYZ Bank ATM Network. Locations can be found at *xyzbank.com/ATMs*.
ATM balance inquiry (out-of-network)	$0.50	This is our fee. "Out-of-network" refers to all the ATMs outside of the XYZ Bank ATM Network. You may also be charged a fee by the ATM operator.
Using your card outside the U.S.		
International transaction	3%	Of the U.S. dollar amount of each transaction.
International ATM withdrawal	$3.00	This is our fee. You may also be charged a fee by the ATM operator, even if you do not complete a transaction.
International ATM balance inquiry	$2.00	This is our fee. You may also be charged a fee by the ATM operator.
Other		
Inactivity	$1.00	You will be charged $1.00 each month after you have not completed a transaction using your card for 12 months.

Register your card for FDIC insurance eligibility and other protections. Your funds will be held at or transferred to XYZ Bank, an FDIC-insured institution. Once there, your funds are insured up to $250,000 by the FDIC in the event XYZ Bank fails, if specific deposit insurance requirements are met and your card is registered. See *fdic.gov/deposit/deposits/prepaid.html* for details.

No overdraft/credit feature.

Contact XYZ Bank by calling 1-800-555-5555, by mail at 555 Street Name, Anytown, NY, or visit *xyzbank.com/prepaid*.

For general information about prepaid accounts, visit *cfpb.gov/prepaid*.
If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit *cfpb.gov/complaint*.

BILLING CODE 4810–AM–C

A–11 through A–29 [Reserved]

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■ 12. In Supplement I to part 1005:

■ a. Under *Section 1005.2—Definitions:*

■ i. In subsection *2(b) Account,* paragraph 2 is removed and paragraph 3 is redesignated as paragraph 2.
■ ii. Subsection *Paragraph 2(b)(3)* is added.
■ b. Under *Section 1005.4—General Disclosure Requirements; Jointly Offered Services:*
■ i. In subsection *4(a) Form of Disclosures,* paragraph 1 is revised.
■ c. Under *Section 1005.10—Preauthorized Transfers:*
■ i. Subsection *10(e)(1) Credit* is revised.
■ ii. In subsection *10(e)(2) Employment or Government Benefit,* paragraph 2 is added.
■ d. Under *Section 1005.12—Relation to Other Laws:*
■ i. Subsection *12(a) Relation to Truth in Lending* is revised.
■ ii. In subsection *12(b) Preemption of Inconsistent State Laws,* paragraph 2 is revised and paragraphs 3 and 4 are added.
■ e. *Section 1005.15—Electronic Fund Transfer of Government Benefits* is added.
■ f. *Section 1005.18—Requirements for Financial Institutions Offering Payroll Card Accounts* is removed.
■ g. *Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts* is added.
■ h. *Section 1005.19—Internet Posting of Prepaid Account Agreements* is added.
■ i. Under *Section 1005.30—Remittance Transfer Definitions:*
■ i. In subsection *30(c) Designated Recipient,* paragraph 2.ii is revised.
■ ii. In subsection *30(g) Sender,* paragraphs 1 and 3 are revised.
■ j. Under *Appendix A—Model Disclosure Clauses and Forms:*
■ i. Paragraphs 2 and 3 are revised.

The revisions, additions, and removals read as follows:

Supplement I to Part 1005—Official Interpretations

Section 1005.2—Definitions

* * * * *

2(b) Account

* * * * *

Paragraph 2(b)(3)

Paragraph 2(b)(3)(i)

1. *Debit card includes prepaid card.* For purposes of subpart A of Regulation E, unless otherwise specified, the term debit card also includes a prepaid card.

2. *Certain employment-related cards not covered as payroll card accounts.* The term ''payroll card account'' does not include an account 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 an account 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 an account 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 accounts would not be payroll card accounts, such accounts 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.

3. *Marketed or labeled as ''prepaid.''* The term ''marketed or labeled as 'prepaid' '' means promoting or advertising an account using the term ''prepaid.'' For example, an account is marketed or labeled as prepaid if the term ''prepaid'' appears on the access device associated with the account or the access device's packaging materials, or on a display, advertisement, or other publication to promote purchase or use of the account. An account may be marketed or labeled as prepaid if the financial institution, its service provider, including a program manager, or the payment network on which an access device for the account is used, promotes or advertises, or contracts with another party to promote or advertise, the account using the label ''prepaid.'' A product or service that is marketed or labeled as prepaid is not a ''prepaid account'' pursuant to § 1005.2(b)(3)(i)(C) if it does not otherwise meet the definition of account under § 1005.2(b)(1).

4. *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.

5. *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.

6. *Prepaid account acting as a pass-through vehicle for funds.* To satisfy § 1005.2(b)(3)(i)(D), a prepaid account must 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, such as a digital wallet, 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)(D).

7. *Not required to be reloadable.* Prepaid accounts need not be reloadable by the consumer or a third party.

8. *Primary function.* To satisfy § 1005.2(b)(3)(i)(D), an account's primary function must be to provide consumers with general transaction capability, which includes the general ability to use loaded funds to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers. This definition excludes accounts that provide such capability only incidentally. For example, the primary function of a brokerage account is to hold funds so that the consumer can conduct transactions through a licensed broker or firm, not to conduct transactions with multiple, unaffiliated merchants for good or services, or at automated teller machines, or to conduct person-to-person transfers. Similarly, the primary function of a savings account is to accrue interest on funds held in the account; such accounts restrict the extent to which the consumer can conduct general transactions and withdrawals. Accordingly, brokerage accounts and savings accounts do not satisfy § 1005.2(b)(3)(i)(D), and thus are not prepaid accounts as defined by § 1005.2(b)(3). The following examples provide additional guidance:

i. An account's primary function is to enable a consumer to conduct transactions with multiple, unaffiliated merchants for goods or services, at automated teller machines, or to conduct person-to-person transfers, even if the account also enables a third party to disburse funds to a consumer. For example, a prepaid account that conveys tax refunds or insurance proceeds to a consumer meets the primary function test if the account can be used, *e.g.,* to purchase goods or services at multiple, unaffiliated merchants.

ii. Whether an account satisfies § 1005.2(b)(3)(i)(D) is determined by reference to the account, not the access device associated with the account. An account satisfies § 1005.2(b)(3)(i)(D) even if the account's access device can be used for other purposes, for example, as a form of identification. Such accounts may include, for example, a prepaid account used to disburse student loan proceeds via a card device that can be used at unaffiliated merchants or to withdraw cash from an automated teller machine, even if that access device also acts as a student identification card.

iii. Where multiple accounts are associated with the same access device, the primary function of each account is determined separately. One or more accounts can satisfy § 1005.2(b)(3)(i)(D) even if other accounts associated with the same access device do not. For example, a student identification card may act as an access device associated with two separate accounts: An account used to conduct transactions with multiple, unaffiliated merchants for goods or services, and an account used to conduct closed-loop

transactions on campus. The account used to conduct transactions with multiple, unaffiliated merchants for goods or services satisfies § 1005.2(b)(3)(i)(D), even though the account used to conduct closed-loop transactions does not (and as such the latter is not a prepaid account as defined by § 1005.2(b)(3)).

iv. An account satisfies § 1005.2(b)(3)(i)(D) if its primary function is to provide general transaction capability, even if an individual consumer does not in fact use it to conduct multiple transactions. For example, the fact that a consumer may choose to withdraw the entire account balance at an automated teller machine or transfer it to another account held by the consumer does not change the fact that the account's primary function is to provide general transaction capability.

v. An account whose primary function is other than to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers, does not satisfy § 1005.2(b)(3)(i)(D). Such accounts may include, for example, a product whose only function is to make a one-time transfer of funds into a separate prepaid account.

9. *Redeemable upon presentation at multiple, unaffiliated merchants.* For guidance, see comments 20(a)(3)–1 and –2.

10. *Person-to-person transfers.* A prepaid account whose primary function is to conduct 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 its primary function is 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.

Paragraph 2(b)(3)(ii)

1. *Excluded health care and employee benefit related prepaid products.* For purposes of § 1005.2(b)(3)(ii)(A), ''health savings account'' means a health savings account as defined in 26 U.S.C. 223(d); ''flexible spending arrangement'' means a 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); ''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; ''dependent care assistance program'' means a dependent care assistance program pursuant to 26 U.S.C. 129; and ''transit or parking reimbursement arrangement'' means a qualified transportation fringe benefit provided by an employer pursuant to 26 U.S.C. 132.

2. *Excluded disaster relief funds.* For purposes of § 1005.2(b)(3)(ii)(B), ''qualified disaster relief funds'' means funds made available through a qualified disaster relief program as defined in 26 U.S.C. 139(b).

3. *Marketed and labeled as a gift card or gift certificate.* Section 1005.2(b)(3)(ii)(D) 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 GPR 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)(ii)(D), 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.

* * * * *

Section 1005.4—General Disclosure Requirements; Jointly Offered Services

4(a) Form of Disclosures

1. *General.* The disclosures required by this part must be in a clear and readily understandable written form that the consumer may retain. Additionally, except as otherwise set forth in §§ 1005.18(b)(7) and 1005.31(c), no particular rules govern type size, number of pages, or the relative conspicuousness of various terms. Numbers or codes are considered readily understandable if explained elsewhere on the disclosure form.

* * * * *

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 accessible by hybrid prepaid-credit cards.* i. Section 1005.10(e)(1) provides an exception from the general rule for an overdraft credit plan other than for a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61. A financial institution may therefore require the automatic repayment of an overdraft credit plan, other than a covered separate credit feature accessible by a hybrid prepaid-credit card, 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.

ii. Credit extended through a negative balance on the asset feature of a prepaid account that meets the conditions of Regulation Z, 12 CFR 1026.61(a)(4), is considered credit extended pursuant to an overdraft credit plan for purposes of § 1005.10(e)(1). Thus, the exception for overdraft credit plans in § 1005.10(e)(1) applies to this credit.

3. *Applicability to covered separate credit features accessible by hybrid prepaid-credit cards.* i. Under § 1005.10(e)(1), creditors may not require by electronic means on a preauthorized, recurring basis repayment of credit extended under a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61. The prohibition in § 1005.10(e)(1) applies to any credit extended under such a credit feature, including preauthorized checks. *See* Regulation Z, 12 CFR 1026.61, and comment 61(a)(1)–3.

ii. 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 covered separate credit features accessible by hybrid prepaid-credit cards as defined in 12 CFR 1026.61, a card issuer generally is not prohibited 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 under a plan that is authorized in writing by the cardholder, so long as the card issuer does not make such deductions to the plan more frequently than once per calendar month. A card issuer is prohibited under Regulation Z, 12 CFR 1026.12(d), from automatically deducting all or part of the cardholder's credit card debt under a covered separate credit feature from a deposit account (such as a prepaid account) held with the card issuer 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 (such as a prepaid account) of credit card balances of a covered separate credit feature accessible by a hybrid prepaid-credit card by electronic means on a preauthorized, recurring basis.

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.* 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. 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. *Issuance of prepaid access devices that can access a covered separate credit feature subject to Regulation Z.* An access device for a prepaid account cannot access a covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, when the access device is issued if the access device is issued prior to the expiration of the 30-day period set forth in 12 CFR 1026.61(c). Regulation Z, 12 CFR 1026.61(c), provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer to become a covered separate credit feature accessible by the hybrid prepaid-credit card. An access device for a prepaid account that is not a hybrid prepaid-credit card as that term is defined in Regulation Z, 12 CFR 1026.61, is subject to the issuance rules in Regulation E.

4. *Addition of a covered separate credit feature to an existing access device for a prepaid account.* Regulation Z governs the addition of a covered separate credit feature as that term is defined in Regulation Z, 12 CFR 1026.61, to an existing access device for a prepaid account. In this case, the access device would become a hybrid prepaid-credit card under Regulation Z (12 CFR part 1026). A covered separate credit feature may be added to a previously issued access device for a prepaid account only upon the consumer's application or specific request as described in Regulation Z, 12 CFR 1026.12(a)(1), and only in compliance with 12 CFR 1026.61(c).

5. *Determining applicable regulation related to liability and error resolution.* i. Under § 1005.12(a)(1)(iv)(B), with respect to a transaction that involves a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in Regulation Z, 12 CFR 1026.61, where credit is extended under a covered separate credit feature accessible by a hybrid prepaid-credit card that is incident to an electronic fund transfer when the hybrid prepaid-credit card accesses both funds in the asset feature of a prepaid account and credit extensions from the credit feature with respect to a particular transaction, Regulation E's liability limitations and error resolution provisions apply to the transaction, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (which apply because of the extension of credit associated with the covered separate credit feature). Section 1005.12(a)(1)(iv)(C) provides that with respect to transactions that involves credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in Regulation Z, 12 CFR 1026.61(a)(4), these transactions are governed solely by the liability limitations and error resolution procedures in Regulation E, and Regulation Z does not apply. Section 1005.12(a)(1)(iv)(D) and (a)(2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, a financial institution must comply with Regulation E's liability limitations and error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's liability limitations and error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable.

ii. Under § 1005.12(a)(1)(iv)(A), with respect to 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 to the transaction, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account).

iii. For transactions involving access devices that also function as credit cards under Regulation Z (12 CFR part 1026), 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 access funds in 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 accesses funds in an asset account only (with no credit extended), the provisions of Regulation E apply. If the transaction access funds in an asset account but also involves an extension of credit under the overdraft credit feature subject to Regulation Z attached to the account, Regulation E's liability limitations and error resolution provisions apply, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (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 feature that is subject to Regulation Z that is separate from the asset account, both Regulation E and Regulation Z apply.

iv. 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 feature 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 feature subject to Regulation Z attached to the checking account. The overdraft credit feature 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 where the transaction is funded partially by funds in the consumer's asset account and partially by credit extended under the overdraft credit feature, the error resolution provisions of Regulation Z, 12 CFR 1026.13(d) and (g), 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 feature, the transaction is governed solely by the liability limitations and error resolution requirements of Regulation Z. *See* Regulation Z, 12 CFR 1026.13(i).

E. The same principles in comment 12(a)–5.iv.A, B, C, and D apply to an access device for a prepaid account that also is a hybrid prepaid-credit card with respect to a covered separate credit feature under Regulation Z, 12 CFR 1026.61. *See also* Regulation Z, 12 CFR 1026.13(i)(2) and comment 13(i)–4.

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 of the Federal Reserve System 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 preempted because it 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 general-use prepaid 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 general-use prepaid cards, as defined in § 1005.20(a), to be declined at the point-of-sale sooner than the gift certificates, store gift cards, or general-use prepaid cards and their underlying funds are permitted to expire under § 1005.20(e).

* * * * *

Section 1005.15—Electronic Fund Transfer of Government Benefits

15(c) Pre-Acquisition Disclosure Requirements

1. *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), accompanied by the information in § 1005.18(b)(5), and the long form disclosure required by § 1005.18(b)(4) before a consumer acquires a prepaid account. For purposes of § 1005.15(c), a consumer is deemed to have received the disclosures required by § 1005.18(b) prior to acquisition when the consumer receives the disclosures before choosing to receive benefits via the government benefit account. The following example illustrates when a consumer receives disclosures before acquisition of an account for purposes of § 1005.15(c):

i. 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. The consumer receives the prepaid card and the disclosures required by § 1005.18(b) to review at the time the consumer receives benefits eligibility information from the agency. After receiving the disclosures, the consumer chooses 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). By contrast, if the consumer does not receive the disclosures required by § 1005.18(b) to review until the time at which the consumer received the first benefit payment deposited into the government benefit account, these disclosures were provided to the consumer post-acquisition, and were not provided in compliance with § 1005.15(c).

2. *Acquisition and disclosures given during the same appointment.* The disclosures and notice required by § 1005.15(c) may be given in the same process or appointment during which the consumer receives a government benefit card. When a consumer receives benefits eligibility information and enrolls to receive benefits during the same process or appointment, a government agency that gives the disclosures and notice required by § 1005.15(c) before the consumer chooses to receive the first benefit payment on the card complies with the timing requirements of § 1005.15(c).

3. *Form and formatting requirements for government benefit account disclosures.* The form and formatting requirements for government benefit accounts in § 1005.15(c) correspond to those for payroll card accounts set forth in § 1005.18(b). See comments 18(b)(2)(xiv)(A)–1 and 18(b)(2)(xiv)(B)–1 for additional guidance regarding the requirements set forth in § 1005.15(c)(2)(i) and (ii), respectively.

4. *Disclosure requirements outside the short form disclosure.* Section 1005.18(b)(5) requires that the name of the financial institution be disclosed outside the short form disclosure. For government benefit accounts, the financial institution that must be disclosed pursuant to § 1005.18(b)(5) is the financial institution that directly holds the account or issues the account's access device. The disclosure provided outside the short form disclosure may, but is not required to, also include the name of the government agency that established the government benefit account.

15(d) Access to Account Information

1. *Access to account information.* For guidance, see comments 18(c)–1 through –3 and 18(c)–5 through –9.

15(e) Modified Disclosure, Limitations on Liability, and Error Resolution Requirements

1. *Modified limitations on liability and error resolution requirements.* For guidance, see comments 18(e)–1 through –3.

15(f) Disclosure of Fees and Other Information

1. *Disclosures on prepaid account access devices.* Pursuant to § 1005.18(f)(3), the name of the financial institution and the Web site URL 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. For government benefit accounts, the financial institution whose name and contact information must be disclosed pursuant to § 1005.18(f)(3) is the financial institution that directly holds the account or issues the account's access device.

* * * * *

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 location or applies for a prepaid account 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

1. *Written and electronic pre-acquisition disclosures.* Section 1005.4(a)(1) generally requires that disclosures be made in writing; written disclosures may be provided in electronic form in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Because § 1005.18(b)(6)(i)(B) provides that electronic disclosures required by § 1005.18(b) need not meet the consumer consent or other applicable provisions of the E-Sign Act, § 1005.18(b) addresses certain requirements for written and electronic pre-acquisition disclosures separately. Section 1005.18(b) also addresses specific requirements for pre-acquisition disclosures provided orally.

2. *Currency.* Fee amounts required to be disclosed by § 1005.18(b) may be disclosed in a foreign currency for a prepaid account denominated in that foreign currency, other than the fee for the purchase price required by § 1005.18(b)(5). For example, a prepaid account sold in a U.S. airport intended for use in England may disclose in pound sterling (£) the fees required to be disclosed in the short form and long form disclosures and outside the short form disclosure, except for the purchase price.

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 a short form disclosure as described in § 1005.18(b)(2), accompanied by the information required to be disclosed by § 1005.18(b)(5), and a long form disclosure as described in § 1005.18(b)(4) before a consumer acquires a prepaid account. For purposes of § 1005.18(b)(1)(i), a consumer acquires a prepaid account by purchasing, opening or choosing to be paid via a prepaid account, as illustrated by the following examples:

i. A consumer inquires about obtaining a prepaid account at a branch location of a bank. A consumer then receives the disclosures required by § 1005.18(b). After receiving the disclosures, a consumer then opens 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 the consumer is provided with a payroll card and the disclosures required by § 1005.18(b) to review. The consumer then chooses to receive wages via a payroll card account. These disclosures were provided pre-acquisition in compliance with § 1005.18(b)(1)(i). By contrast, if a consumer receives the disclosures required by § 1005.18(b) to review at the end of the first pay period, after the consumer received the first payroll payment on the payroll card, 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.* Disclosures required by § 1005.18(b) may be provided before or after a consumer has initiated the process of acquiring a prepaid account electronically. When the disclosures required by § 1005.18(b) are presented after a consumer has initiated the process for acquiring a prepaid account online or via a mobile device, but before a consumer chooses to accept the prepaid account, such disclosures are also made pre-acquisition in accordance with § 1005.18(b)(1)(i). The disclosures required by § 1005.18(b) that are provided electronically when a consumer acquires a prepaid account electronically are not considered to be given pre-acquisition unless a consumer must view the Web page containing the disclosures before choosing to accept the prepaid account. The following examples illustrate several methods by which a financial institution may present § 1005.18(b) disclosures before a consumer acquires a prepaid account electronically in compliance with § 1005.18(b)(1)(i):

i. A financial institution presents the short form disclosure required by § 1005.18(b)(2), together with the information required by § 1005.18(b)(5), and the long form disclosure required by § 1005.18(b)(4) on the same Web page. A consumer must view the Web page before choosing to accept the prepaid account.

ii. A financial institution presents the short form disclosure required by § 1005.18(b)(2), together with the information required by § 1005.18(b)(5), on a Web page. The financial institution includes, after the short form disclosure or as part of the statement required by § 1005.18(b)(2)(xiii), a link that directs the consumer to a separate Web page containing the long form disclosure required by § 1005.18(b)(4). The consumer must view the Web page containing the long form disclosure before choosing to accept the prepaid account.

iii. A financial institution presents on a Web page the short form disclosure required by § 1005.18(b)(2), together with the information required by § 1005.18(b)(5), followed by the initial disclosures required by § 1005.7(b), which contains the long form disclosure required by § 1005.18(b)(4), in accordance with § 1005.18(f)(1). The financial institution includes, after the short form disclosure or as part of the statement required by § 1005.18(b)(2)(xiii), a link that directs the consumer to the section of the initial disclosures containing the long form disclosure pursuant to § 1005.18(b)(4). A consumer must view this Web page before choosing to accept the prepaid account.

18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Locations

1. *Retail locations.* Section 1005.18(b)(1)(ii) sets forth an alternative timing regime for pre-acquisition disclosures for prepaid accounts acquired in person at retail locations. For purposes of § 1005.18(b)(1)(ii), a retail location is a store or other physical site where a consumer can purchase a prepaid account in person and that is operated by an entity other than the financial institution that issues the prepaid account. A branch of a financial institution that offers its own prepaid accounts is not a retail location with respect to those accounts and, thus, both the short form and the long form disclosure must be provided pre-acquisition pursuant to the timing requirement set forth in § 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 location exception set forth in § 1005.18(b)(1)(ii), the disclosures required by § 1005.18(b)(2), (4), and (5) must be provided to a consumer pre-acquisition in compliance with § 1005.18(b)(1)(i). A short form disclosures is not considered to have been provided pre-acquisition if, for example, it is inside the packaging material accompanying a prepaid account access device such that the consumer cannot see or access the disclosures before acquiring the prepaid account.

3. *Consumers working in retail locations.* A payroll card account offered to consumers working in retail locations is not eligible for the retail location exception in § 1005.18(b)(1)(ii); thus, a consumer employee must receive both the short form and long form disclosures for the payroll card account pre-acquisition pursuant to the timing requirement set forth in § 1005.18(b)(1)(i).

4. *Providing the long form disclosure by telephone and Web site pursuant to the retail location exception.* Pursuant to § 1005.18(b)(1)(ii), a financial institution may provide the long form disclosure described in § 1005.18(b)(4) after a consumer acquires a prepaid account in a retail location, if the conditions set forth in § 1005.18(b)(1)(ii)(A) through (D) are met. Pursuant to § 1005.18(b)(1)(ii)(C), a financial institution must make the long form disclosure accessible to consumers by telephone and via a Web site when not providing a written version of the long form disclosure pre-acquisition. A financial institution may, 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 Prepaid Accounts 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 personally identifiable 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) and (5) orally before a consumer acquires a prepaid account orally by telephone. A financial institution may, for example, provide these disclosures by using an interactive voice response or similar system or by using a customer service agent, after the consumer has initiated the purchase of a prepaid account by telephone, but before the consumer acquires the prepaid account. In addition, a financial institution must provide the initial disclosures required by § 1005.7, as modified by § 1005.18(f)(1), before the first electronic fund transfer is made involving the prepaid account.

18(b)(2) Short Form Disclosure Content

1. *Disclosures that are not applicable or are free.* The short form disclosures required by § 1005.18(b)(2) must always be provided prior to prepaid account acquisition, even when a particular feature is free or 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 required to be disclosed pursuant to § 1005.18(b)(2)(iii), the financial institution would list ''ATM withdrawal in-network'' on the short form disclosure and list ''$0'' as the fee. If, however, the financial institution does not have its own network or an affiliated network from which a consumer can withdraw money via automated teller machine, the financial institution would list ''ATM withdrawal in-network'' on the short form disclosure but instead of disclosing a fee amount, state ''N/A.'' (The financial institution must still disclose any fee it charges for out-of-network ATM withdrawals.)

2. *Prohibition on disclosure of finance charges.* Pursuant to § 1005.18(b)(3)(vi), a financial institution may not include in the short form disclosure finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61. *See also* comment 18(b)(3)(vi)–1.

18(b)(2)(i) Periodic Fee

1. *Periodic fee variation.* If the amount of a fee disclosed on the short form could vary, the financial institution must disclose in the short form the information required by § 1005.18(b)(3)(i). If the amount of the periodic fee could vary, the financial institution may opt instead to use an alternative disclosure pursuant to § 1005.18(b)(3)(ii). *See* comments 18(b)(3)(i)–1 and 18(b)(3)(ii)–1.

18(b)(2)(iii) ATM Withdrawal Fees

1. *International ATM withdrawal fees.* Pursuant to § 1005.18(b)(2)(iii), a financial institution must disclose the fees imposed when a consumer uses an automated teller machine to initiate a withdrawal of cash in the United States from the prepaid account, both within and outside of the financial institution's network or a network affiliated with the financial institution. A financial institution may not disclose its fee (if any) for using an automated teller machine to initiate a withdrawal of cash in a foreign country in the disclosure required by § 1005.18(b)(2)(iii), although it may be required to disclose that fee as an additional fee type pursuant to § 1005.18(b)(2)(ix).

18(b)(2)(iv) Cash Reload Fee

1. *Total of all charges.* Pursuant to § 1005.18(b)(2)(iv), a financial institution must disclose the total of all charges imposed when a consumer reloads cash into a prepaid account, including charges imposed by the financial institution as well as any charges that may be imposed by third parties for the cash reload. The cash reload fee includes the cost of adding cash to the prepaid account 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 the prepaid account, or any other method a consumer may use to reload cash into the prepaid account. For example, a financial institution does not have its own proprietary cash reload network and instead contracts with a third-party reload network for this service. The financial institution itself does not charge any fee related to cash reloads but the third-party reload network charges a fee of $3.95 per cash reload. The financial institution must disclose the cash reload fee as $3.95. If the financial institution offers more than one method to reload cash into the prepaid account, § 1005.18(b)(3)(i) requires disclosure of the highest cash reload fee. For example, a financial institution contracts with two third-party cash reload networks; one third party charges $3.95 for a point-of-sale reload and the other third party charges $2.95 for purchase of a reload pack. In addition to the third-party cash reload charge, the financial institution charges a $1 fee for every cash reload. The financial institution must disclose the cash reload fee on the short form as $4.95, that is, the highest third-party fee plus the financial institution's $1 fee. See comments 18(b)(3)(v)–1 for additional guidance regarding third-party fees for cash reloads.

2. *Cash deposit fee.* If a financial institution does not permit cash reloads via a third-party reload network but instead permits cash deposits, for example, in a bank branch, the term ''cash deposit'' may be substituted for ''cash reload.''

18(b)(2)(v) ATM Balance Inquiry Fees

1. *International ATM balance inquiry fees.* Pursuant to § 1005.18(b)(2)(v), a financial institution must disclose the fees imposed when a consumer uses an automated teller machine to check the balance of the prepaid account in the United States, both within and outside of the financial institution's network or a network affiliated with the financial institution. A financial institution may not disclose its fee (if any) for using an automated teller machine to check the balance of the prepaid account in a foreign country in the disclosure required by § 1005.18(b)(2)(v), although it may be required to disclose that fee as an additional fee type pursuant to § 1005.18(b)(2)(ix).

18(b)(2)(vii) Inactivity Fee

1. *Inactivity fee conditions.* Section 1005.18(b)(2)(vii) requires disclosure of any fee for non-use, dormancy, or inactivity of the prepaid account as well as the conditions that trigger the financial institution to impose that fee. For example, a financial institution that imposes an inactivity fee of $1 per month after 12 months without any transactions on the prepaid account would disclose on the short form ''Inactivity (after 12 months with no transactions)'' and ''$1.00 per month.''

18(b)(2)(viii) Statements Regarding Additional Fee Types

18(b)(2)(viii)(A) Statement Regarding Number of Additional Fee Types Charged

1. *Fee types counted in total number of additional fee types.* Section 1005.18(b)(2)(viii)(A) requires a statement disclosing the number of additional fee types the financial institution may charge consumers with respect to the prepaid account, using the following clause or a substantially similar clause: ''We charge [x] other types of fees.'' The number of additional fee types disclosed must reflect the total number of fee types under which the financial institution may charge fees, excluding fees required to be disclosed pursuant to § 1005.18(b)(2)(i) through (vii) and (b)(5) and any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61. The following clarify which fee types to include in the total number of additional fee types:

i. *Fee types excluded from the number of additional fee types.* The number of additional fee types required to be disclosed pursuant to § 1005.18(b)(2)(viii)(A) does not include the fees otherwise required to be disclosed in the short form pursuant to § 1005.18(b)(2)(i) through (vii), nor any purchase fee or activation fee required to be disclosed outside the short form pursuant to § 1005.18(b)(5). It also does not include any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a credit feature defined in 12 CFR 1026.61. The number of additional fee types includes only fee types under which the financial institution may charge fees; accordingly, third-party fees are not included unless they are imposed for services performed on behalf of the financial institution. In addition, the number of additional fee types includes only fee types the financial institution may charge consumers with respect to the prepaid account; accordingly, additional fee types does not include other revenue sources such as interchange fees or fees paid by employers for payroll card programs, government agencies for government benefit programs, or other entities sponsoring prepaid account programs for financial disbursements.

ii. *Fee types counted in the number of additional fee types.* Fee types that bear a relationship to, but are separate from, the static fee types disclosed in the short form must be counted as additional fees for purposes of § 1005.18(b)(2)(viii). For

example, the ATM withdrawal and ATM balance inquiry fee types required to be disclosed respectively by § 1005.18(b)(2)(iii) and (v) that are excluded from the number of additional fee types pursuant to § 1005.18(b)(2)(viii) do not include such services outside of the United States. Thus, any international ATM fees charged by the financial institution for ATM withdrawal or balance inquiries must each be counted in the total number of additional fee types. Similarly, any fees for reloading funds into a prepaid account in a form other than cash (such as electronic reload and check reload, as described in comment 18(b)(2)(viii)(A)–2) must be counted in the total number of additional fee types because § 1005.18(b)(2)(iv) is limited to cash reloads. Also, additional fee types disclosed in the short form pursuant to § 1005.18(b)(2)(ix) must be counted in the total number of additional fee types.

2. *Examples of fee types and fee variations.* The term fee type, as used in § 1005.18(b)(2)(viii) and (ix), is a general category under which a financial institution charges fees to consumers. A financial institution may charge only one fee within a particular fee type, or may charge two or more variations of fees within the same fee type. The following is a list of examples of fee types a financial institution may use when determining both the number of additional fee types charged pursuant to § 1005.18(b)(2)(viii)(A) and any additional fee types to disclose pursuant to § 1005.18(b)(2)(ix). A financial institution may create an appropriate name for other additional fee types.

i. *Fee types related to reloads of funds.* Fees for reloading funds into a prepaid account. Fees for cash reloads are required to be disclosed in the short form pursuant to § 1005.18(b)(2)(iv) and that such fees are not counted in the total number of additional fee types or disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix). Fee types for other methods to reload funds, such as Electronic reload or Check reload, would be counted in the total number of additional fee types and may be required to be disclosed as additional fee types pursuant to § 1005.18(b)(2)(ix).

A. *Electronic reload.* Fees for reloading a prepaid account through electronic methods. Fee variations within this fee type may include fees for transferring funds from a consumer's bank account via ACH, reloads conducted using a debit card or credit card, and for incoming wire transfers.

B. *Check reload.* Fees for reloading a prepaid account using checks. Fee variations within this fee type may include fees for depositing checks at an ATM, depositing checks with a teller at the financial institution's branch location, mailing checks to the financial institution for deposit, and depositing checks using remote deposit capture.

ii. *Fee types related to withdrawals of funds.* Fees for withdrawing funds from a prepaid account. Per purchase fees and ATM withdrawal fees within the United States are fee types required to be disclosed in the short form respectively pursuant to § 1005.18(b)(2)(ii) and (iii) and thus such fees are not counted in the total number of additional fee types or disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix). Fee types for other methods to withdraw funds, such as Electronic withdrawal, Teller withdrawal, Cash back at point of sale (POS), and Account closure would be counted in the total of additional fee types and may be required to be disclosed as additional fee types pursuant to § 1005.18(b)(2)(ix).

A. *Electronic withdrawal.* Fees for withdrawing funds from a prepaid account through electronic methods other than an ATM. Fee variations within this fee type may include fees for transferring funds from the prepaid account to a consumer's bank account or other destination.

B. *Teller withdrawal.* Fees for withdrawing funds from a prepaid account in person with a teller at a bank or credit union. Fee variations within this fee type may include fees for withdrawing funds, whether at the financial institution's own branch locations or at another bank or credit union.

C. *Cash back at POS.* Fees for withdrawing cash from a prepaid account via cash back at a merchant's point-of-sale terminal.

D. *Account closure.* Fees for closing out a prepaid account, such as for a check refund. Fee variations within this fee type may include fees for regular and expedited delivery of close-out funds.

iii. *Fee types related to international transactions.* Fee types for international transactions and ATM activity.

A. *International ATM withdrawal.* Fees for withdrawing funds at an ATM outside the United States. This fee type does not include fees for ATM withdrawals in the United States, as such fees are required to be disclosed in the short form pursuant to § 1005.18(b)(2)(iii).

B. *International ATM balance inquiry.* Fees for balance inquiries at an ATM outside the United States. This fee type does not include fees for ATM balance inquiries in the United States, as such fees are required to be disclosed in the short form pursuant to § 1005.18(b)(2)(v).

C. *International transaction (excluding ATM withdrawal and balance inquiry).* Fees for transactions outside the United States. Fee variations within this fee type may include fees for currency conversion, foreign exchange processing, and other charges for transactions outside of the United States.

iv. *Bill payment.* Fees for bill payment services. Fee variations within this fee type may include fees for ACH bill payment, paper check bill payment, check cancellation, and expedited delivery of paper check.

v. *Person-to-person or card-to-card transfer of funds.* Fees for transferring funds from one prepaid account to another prepaid account. Fee variations within this fee type may include fees for transferring funds to another prepaid account within or outside of a specified prepaid account program, transferring funds to another cardholder within United States or outside the United States, and expedited transfer of funds.

vi. *Paper checks.* Fees for providing paper checks that draw on the prepaid account. Fee variations within this fee type may include fees for providing checks and associated shipping costs. This does not include checks issued as part of a bill pay service, which are addressed in comment 18(b)(2)(viii)(A)–2.iv above.

vii. *Stop payment.* Fees for stopping payment of a preauthorized transfer of funds.

viii. *Fee types related to card services.* Fee types for card services.

A. *Card replacement.* Fees for replacing or reissuing a prepaid card that has been lost, stolen, damaged, or that has expired. Fee variations within this fee types may include fees for replacing the card, regular or expedited delivery of the replacement card, and international card replacement.

B. *Secondary card.* Fees for issuing an additional access device assigned to a particular prepaid account.

C. *Personalized card.* Fees for customizing or personalizing a prepaid card.

ix. *Legal.* Fees for legal process. Fee variations within this fee type may include fees for garnishments, attachments, levies, and other court or administrative orders against a prepaid account.

3. *Multiple service plans.* Pursuant to § 1005.18(b)(2)(vi), a financial institution using the multiple service plan short form disclosure pursuant to § 1005.18(b)(6)(iii)(B)(*2*) must disclose only the fee for calling customer service via a live agent. Thus, pursuant to § 1005.18(b)(2)(viii), any charge for calling customer service via an interactive voice response system must be counted in the total number of additional fee types.

4. *Consistency in additional fee type categorization.* A financial institution must use the same categorization of fee types in the number of additional fee types disclosed pursuant to § 1005.18(b)(2)(viii) and in its determination of which additional fee types to disclose pursuant to § 1005.18(b)(2)(ix).

18(b)(2)(viii)(B) Statement Directing Consumers to Disclosure of Additional Fee Types

1. *Statement clauses.* Section 1005.18(b)(2)(viii)(B) requires, if a financial institution makes a disclosure of additional fee types pursuant to § 1005.18(b)(2)(ix), it must include in the short form a statement directing consumers to that disclosure, located after but on the same line of text as the statement regarding the number of additional fee types required by § 1005.18(b)(2)(viii)(A), using the following clause or a substantially similar clause: ''Here are some of them:''. A financial institution that makes no disclosure pursuant to § 1005.18(b)(2)(ix) may not include a disclosure pursuant to § 1005.18(b)(2)(viii)(B). The following examples provide guidance regarding substantially similar clauses a financial institution may use in certain circumstances to make its disclosures under § 1005.18(b)(2)(viii)(A) and (B):

i. A financial institution that has one additional fee type and discloses that additional fee type pursuant to § 1005.18(b)(2)(ix) might provide the statements required by § 1005.18(b)(2)(viii)(A) and (B) together as: ''We charge 1 other type of fee. It is:''.

ii. A financial institution that has five additional fee types and discloses one of those additional fee types pursuant to § 1005.18(b)(2)(ix) might provide the statements required by § 1005.18(b)(2)(viii)(A) and (B) together as: ''We charge 5 other types of fees. Here is 1 of them:''.

iii. A financial institution that has two additional fee types and discloses both of those fee types pursuant to § 1005.18(b)(2)(ix) might provide the statement required by § 1005.18(b)(2)(viii)(A) and (B) together as: ''We charge 2 other types of fees. They are:''.

18(b)(2)(ix) Disclosure of Additional Fee Types

18(b)(2)(ix)(A) Determination of Which Additional Fee Types To Disclose

1. *Number of fee types to disclose.* Section 1005.18(b)(2)(ix)(A) requires disclosure of the two fee types that generate the highest revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in § 1005.18(b)(2)(ix)(D) and (E), excluding the categories set forth in § 1005.18(b)(2)(ix)(A)(*1*) through (*3*). See comment 18(b)(2)(viii)(A)–2 for guidance on and examples of fee types. If a prepaid account program has two fee types that satisfy the criteria in § 1005.18(b)(2)(ix)(A), it must disclose both fees. If a prepaid account program has three or more fee types that potentially satisfy the criteria in § 1005.18(b)(2)(ix)(A), the financial institution must disclose only the two fee types that generate the highest revenue from consumers. See comment 18(b)(2)(ix)(B)–1 for guidance regarding the disclosure of additional fee types for a prepaid account with fewer than two fee types that satisfy the criteria in § 1005.18(b)(2)(ix)(A).

2. *Abbreviations.* Commonly accepted or readily understandable abbreviations may be used as needed for additional fee types and fee variations disclosed pursuant to § 1005.18(b)(2)(ix). For example, to accommodate on one line in the short form disclosure the additional fee types ''international ATM balance inquiry'' or ''person-to-person transfer of funds,'' with or without fee variations, a financial institution may choose to abbreviate the fee type name as ''Int'l ATM inquiry'' or ''P2P transfer.''

3. *Revenue from consumers.* The revenue calculation for the disclosure of additional fee types pursuant to § 1005.18(b)(2)(ix)(A) is based on fee types that the financial institution may charge consumers with respect to the prepaid account. The calculation excludes other revenue sources such as revenue generated from interchange fees and fees paid by employers for payroll card programs, government agencies for government benefit programs, and other entities sponsoring prepaid account programs for financial disbursements. It also excludes third-party fees, unless they are imposed for services performed on behalf of the financial institution.

4. *Assessing revenue within and across prepaid account programs to determine disclosure of additional fee types.* Pursuant to § 1005.18(b)(2)(ix)(A), the disclosure of the two fee types that generate the highest revenue from consumers must be determined for each prepaid account program or across prepaid account programs that share the same fee schedule. Thus, if a financial institution offers more than one prepaid account program, unless the programs share the same fee schedule, the financial institution must consider the fee revenue data separately for each prepaid account program and not consolidate the fee revenue data across prepaid account programs. Prepaid account programs are deemed to have the same fee schedules if they charge the same fee amounts, including offering the same fee waivers and fee reductions for the same features. The following examples illustrate how to assess revenue within and across prepaid account programs to determine the disclosure of additional fee types:

i. *Prepaid account programs with different fee schedules.* A financial institution offers multiple prepaid account programs and each program has a different fee schedule. The financial institution must consider the revenue from consumers for each program separately; it may not consider the revenue from all of its prepaid account programs together in determining the disclosure of additional fee types for its programs.

ii. *Prepaid account programs with identical fee schedules.* A financial institution offers multiple prepaid account programs and they all share the same fee schedule. The financial institution may consider the revenue across all of its prepaid account programs together in determining the disclosure of additional fee types for its programs.

iii. *Prepaid account programs with both different fee schedules and identical fee schedules.* A financial institution offers multiple prepaid account programs, some of which share the same fee schedule. The financial institution may consider the revenue across all prepaid account programs with identical fee schedules in determining the disclosure of additional fee types for those programs. The financial institution must separately consider the revenue from each of the prepaid account programs with unique fee schedules.

iv. *Multiple service plan prepaid account programs.* A financial institution that discloses multiple service plans on a short form disclosure as permitted by § 1005.18(b)(6)(iii)(B)(*2*) must consider revenue across all of those plans in determining the disclosure of additional fee types for that program. If, however, the financial institution instead is disclosing the default service plan pursuant to § 1005.18(b)(6)(iii)(B)(*1*), the financial institution must consider the revenue generated from consumers for the default service plan only. See § 1005.18(b)(6)(iii)(B)(*2*) and comment 18(b)(6)(iii)(B)(*2*)–1 for guidance on what constitutes multiple service plans.

5. *Exclusions.* Once the financial institution has calculated the fee revenue data for the prepaid account program or across prepaid account programs that share the same fee schedule during the appropriate time period, it must remove from consideration the categories excluded pursuant to § 1005.18(b)(2)(ix)(A)(*1*) through (*3*) before determining the fee types, if any, that generated the highest revenue.

i. *Exclusion for fee types required to be disclosed elsewhere.* Fee types otherwise required to be disclosed in or outside the short form are excluded from the additional fee types required to be disclose pursuant to § 1005.18(b)(2)(ix)(A)(*1*). Thus, the following fee types are excluded: Periodic fee, per purchase fee, ATM withdrawal fees (for ATM withdrawals in the United States), cash reload fee, ATM balance inquiry fees (for ATM balance inquiries in the United States), customer service fees, and inactivity fee. However, while the cash reload fee type is excluded, other reload fee types, such as electronic reload and check reload, are not excluded under § 1005.18(b)(2)(ix)(A)(*1*) and thus may be disclosed as additional fee types pursuant to § 1005.18(b)(2)(ix). Similarly, while the fee types ATM withdrawal and ATM balance inquiry in the United States are excluded, international ATM withdrawal and international ATM balance inquiry fees are not excluded under § 1005.18(b)(2)(ix)(A)(*1*) and thus may be disclosed as additional fee types pursuant to § 1005.18(b)(2)(ix). Also pursuant to § 1005.18(b)(2)(ix)(A)(*1*), the purchase price and activation fee, if any, required to be disclosed outside the short form disclosure pursuant to § 1005.18(b)(5), are excluded from the additional fee types required to be disclosed pursuant to § 1005.18(b)(2)(ix).

ii. *De minimis exclusion.* Any fee types that generated less than 5 percent of the total revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in § 1005.18(b)(2)(ix)(D) and (E) are excluded from the additional fee types required to be disclosed pursuant to § 1005.18(b)(2)(ix)(A)(*2*). For example, for a particular prepaid account program over the appropriate time period, bill payment, check reload, and card replacement are the only fee types that generated 5 percent or more of the total revenue from consumers at, respectively, 15 percent, 10 percent, and 7 percent. Two other fee types, legal fee and personalized card, generated revenue below 1 percent of the total revenue from consumers. The financial institution must disclose bill payment and check reload as the additional fee types for that particular prepaid account program because those two fee types generated the highest revenue from consumers from among the categories not excluded from disclosure as additional fee types. For a different prepaid account program over the appropriate time period, bill payment is the only fee type that generated 5 percent or more of the total revenue from consumers. Two other fee types, check reload and card replacement, each generated revenue below 5 percent of the total revenue from consumers. The financial institution must disclose bill payment as an additional fee type for that particular prepaid account program because it is the only fee type that satisfies the criteria of § 1005.18(b)(2)(ix)(A). The financial institution may, but is not required to, disclose either check reload or card

replacement on the short form as well, pursuant to § 1005.18(b)(2)(ix)(B). *See* comment 18(b)(2)(ix)(B)–1.

iii. *Exclusion for credit-related fees.* Any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61, are excluded from the additional fee types required to be disclosed pursuant to § 1005.18(b)(2)(ix)(A)(*3*). Pursuant to § 1005.18(b)(2)(viii)(A)(*2*), such finance charges are also excluded from the number of additional fee types disclosed.

18(b)(2)(ix)(B) Disclosure of Fewer Than Two Additional Fee Types

1. *Disclosure of one or no additional fee types.* The following examples provide guidance on the additional fee types disclosure pursuant to § 1005.18(b)(2)(ix)(B) for a prepaid account with fewer than two fee types that satisfy the criteria in § 1005.18(b)(2)(ix)(A):

i. A financial institution has a prepaid account program with only one fee type that satisfies the criteria in § 1005.18(b)(2)(ix)(A) and thus, pursuant to § 1005.18(b)(2)(ix)(A), the financial institution must disclose that one fee type. The prepaid account program has three other fee types that generate revenue from consumers, but they do not exceed the de minimis threshold or otherwise satisfy the criteria in § 1005.18(b)(2)(ix)(B). Pursuant to § 1005.18(b)(2)(ix)(B), the financial institution is not required to make any additional disclosure, but it may choose to disclose one of the three fee types that do not meet the criteria in § 1005.18(b)(2)(ix)(A).

ii. A financial institution has a prepaid account program with four fee types that generate revenue from consumers, but none exceeds the de minimis threshold or otherwise satisfy the criteria in § 1005.18(b)(2)(ix)(A). Pursuant to § 1005.18(b)(2)(ix)(B), the financial institution is not required to make any disclosure, but it may choose to disclose one or two of the fee types that do not meet the criteria in § 1005.18(b)(2)(ix)(A).

2. *No disclosure of finance charges as an additional fee type.* Pursuant to § 1005.18(b)(3)(vi), a financial institution may not disclose any finance charges as a voluntary additional fee disclosure under § 1005.18(b)(2)(ix)(B).

18(b)(2)(ix)(C) Fee Variations in Additional Fee Types

1. *Two or more fee variations.* Section 1005.18(b)(2)(ix)(C) specifies how to disclose additional fee types with two fee variations, more than two fee variations, and for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(*2*). See comment 18(b)(2)(viii)(A)–2 for guidance on and examples of fee types and fee variations within those fee types. The following examples illustrate how to disclose two-tier fees and other fee variations in additional fee types:

i. *Two fee variations with different fee amounts.* A financial institution charges a fee of $1 for providing a card replacement using standard mail service and charges a fee of $5 for providing a card replacement using expedited delivery. The financial institution must calculate the total revenue generated from consumers for all card replacements, both via standard mail service and expedited delivery, during the required time period to determine whether it is required to disclose card replacement as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because there are only two fee variations for the fee type ''card replacement,'' if card replacement is required to be disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix)(A), the financial institution must disclose both fee variations pursuant to § 1005.18(b)(2)(ix)(C). Thus, the financial institution would disclose on the short form the fee type and two variations as ''Card replacement (regular or expedited delivery)'' and the fee amount as ''$1.00 or $5.00''.

ii. *More than two fee variations.* A financial institution offers two methods of bill payment—via ACH and paper check—and offers two modes of delivery for bill payments made by paper check—regular standard mail service and expedited delivery. The financial institution charges $0.25 for bill pay via ACH, $0.50 for bill pay via paper check sent by regular standard mail service, and $3 for bill pay via paper check sent via expedited delivery. The financial institution must calculate the total revenue generated from consumers for all methods of bill pay and all modes of delivery during the required time period to determine whether it must disclose bill payment as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because there are more than two fee variations for the fee type ''bill payment,'' if bill payment is required to be disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix)(A), the financial institution must disclose the highest fee, $3, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used, pursuant to § 1005.18(b)(3)(i). Thus, the financial institution would disclose on the short form the fee type as ''Bill payment'' and the fee amount as ''$3.00*''.

iii. *Two fee variations with like fee amounts.* A financial institution offers two methods of check reload for which it charges a fee—depositing checks at an ATM and depositing checks with a teller at the financial institution's branch locations. There is a fee of $0.50 for both methods of check deposit. The financial institution must calculate the total revenue generated from both of these check reload methods during the required time period to determine whether it must disclose this fee type as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because the fee amounts are the same for the two methods of check deposit, if the fee type is required to be disclosed as an additional fee type, the financial institution's options for disclosing this fee type in accordance with § 1005.18(b)(2)(ix)(C) and (b)(3)(iii) include: ''Check reload (ATM or teller check dep)'' and the fee amount as ''$0.50'' or ''Check reload'' and the fee amount as ''$0.50''.

iv. *Multiple service plans.* A financial institution provides a short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(*2*). Notwithstanding that an additional fee type has only two fee variations, a financial institution must disclose the highest fee in accordance with § 1005.18(b)(3)(i).

2. *One fee variation under a particular fee type.* Section 1005.18(b)(2)(ix)(C) provides in part that, if a financial institution only charges one fee under a particular fee type, the financial institution must disclose the name of the additional fee type and the fee amount; it may, but is not required to, disclose also the name of the one fee variation, if any, for which the fee amount is charged, in a format substantially similar to that used to disclose the two-tier fees required by § 1005.18(b)(2)(v) and (vi), except that the financial institution must disclose only the one fee variation name and fee amount instead of two. For example, a financial institution offers one method of electronic reload for which it charges a fee—electronic reload conducted using a debit card. The financial institution must calculate the total revenue generated from consumers for the fee type electronic reload (*i.e.,* in this case, electronic reloads conducted using a debit card) during the required time period to determine whether it must disclose electronic reload as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because the financial institution only charges one fee variation under the fee type electronic reload, if this fee type is required to be disclosed as an additional fee type, the financial institution has two options for disclosing this fee type in accordance with § 1005.18(b)(2)(ix)(C): ''Electronic reload (debit card)'' and the fee amount as ''$1.00'' or ''Electronic reload'' and the fee amount as ''$1.00''.

18(b)(2)(ix)(D) Timing of Initial Assessment of Additional Fee Types Disclosure

18(b)(2)(ix)(D)(1) Existing Prepaid Account Programs as of October 1, 2017

1. *24 month period with available data.* Section 1005.18(b)(2)(ix)(D)(*1*) requires for a prepaid account program in effect as of October 1, 2017 the financial institution must disclose additional fee types based on revenue for a 24-month period that begins no earlier than October 1, 2014. Thus, a prepaid account program that was in existence as of October 1, 2017 must assess its additional fee types disclosure from data collected during a consecutive 24-month period that took place between October 1, 2014 and October 1, 2017. For example, an existing prepaid account program was first offered to consumers on January 1, 2012 and provides its first short form disclosure on October 1, 2017. The earliest 24-month period from which that financial institution could calculate its first additional fee types disclosure would be from October 1, 2014 to September 30, 2016.

18(b)(2)(ix)(D)(2) Existing Prepaid Account Programs as of October 1, 2017 With Unavailable Data

1. *24 month period without available data.* Section 1005.18(b)(2)(ix)(D)(*2*) requires that if a financial institution does not have 24 months of fee revenue data for a particular

prepaid account program from which to calculate the additional fee types disclosure in advance of October 1, 2017, the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the 24-month period that begins on October 1, 2017. For example, a financial institution begins offering to consumers a prepaid account program six months before October 1, 2017. Because the prepaid account program will not have 24 months of fee revenue data prior to October 1, 2017, pursuant to § 1005.18(b)(2)(ix)(D)(*2*) the financial institution must disclose the additional fee types it reasonably anticipates the prepaid account program will generate over the 24-month period that begins on October 1, 2017. The financial institution would take into account the data it had accumulated at the time of its calculation to arrive at the reasonably anticipated additional fee types for the prepaid account program.

18(b)(2)(ix)(E) Timing of Periodic Reassessment and Update of Additional Fee Types Disclosure

18(b)(2)(ix)(E)(2) Periodic Reassessment

1. *Periodic reassessment and, if applicable, update of additional fee types disclosure.* Pursuant to § 1005.18(b)(2)(ix)(E)(*2*), a financial institution must reassess whether its previously disclosed additional fee types continue to comply with the requirements of § 1005.18(b)(2)(ix) every 24 months based on revenue for the previous 24-month period. The financial institution must complete this reassessment and update its disclosures, if applicable, within three months of the end of the 24-month period, except as provided in the update printing exception in § 1005.18(b)(2)(ix)(E)(*4*). The following examples provide guidance on the periodic assessment and, if applicable, update of the disclosure of additional fee types pursuant to § 1005.18(b)(2)(ix)(E)(*2*):

i. *Reassessment with no change in the additional fee types disclosed.* A financial institution disclosed two additional fee types (bill payment and card replacement) for a particular prepaid account program on October 1, 2017. Starting on October 1, 2019, the financial institution assessed the fee revenue data it collected over the previous 24 months, and the two additional fee types previously disclosed continue to qualify as additional fee types pursuant to § 1005.18(b)(2)(ix). The financial institution is not required to take any action with regard to the disclosure of additional fee types for that prepaid account program.

ii. *Reassessment with a change in the additional fee types disclosed.* A financial institution disclosed two additional fee types (bill payment and card replacement) for a particular prepaid account program on October 1, 2017. Starting on October 1, 2019, the financial institution assessed the fee revenue data it collected over the previous 24 months, and bill payment continued to qualify as an additional fee type pursuant to § 1005.18(b)(2)(ix) but check reload qualified as the second additional fee type instead of card replacement. The financial institution must update the additional fee types disclosure in its short form disclosures provided electronically, orally, and in writing (other than for printed materials that qualify for the update printing exception in § 1005.18(b)(2)(ix)(E)(*4*)) no later than January 1, 2020, which is three months after the end of the 24-month period.

iii. *Reassessment with the addition of an additional fee type already voluntarily disclosed.* A financial institution disclosed one additional fee type (bill payment) and voluntarily disclosed one other additional fee type (card replacement, both for regular and expedited delivery) for a particular prepaid account program on October 1, 2017. Starting on October 1, 2019, the financial institution assessed the fee revenue data it collected over the previous 24 months, and bill payment continued to qualify as an additional fee type pursuant to § 1005.18(b)(2)(ix) and card replacement now qualified as the second additional fee type. Because the financial institution already had disclosed its card replacement fees in the format required for an additional fee type disclosure, the financial institution is not required to take any action with regard to the additional fee types disclosure in the short form for that prepaid account program.

2. *Reassessment more frequently than every 24 months.* Pursuant to § 1005.18(b)(2)(ix)(E)(*2*), a financial institution may, but is not required to, carry out the reassessment and update, if applicable, more frequently than every 24 months, at which time a new 24-month period commences. A financial institution may choose to do this, for example, to sync its reassessment process for additional fee types with its financial reporting schedule or other financial analysis it performs regarding the particular prepaid account program. If a financial institution chooses to reassess its additional fee types disclosure more frequently than every 24 months, it is still required to use 24 months of fee revenue data to conduct the reassessment. For example, a financial institution first offered a particular prepaid account program on October 1, 2016 and thus was required to estimate its initial additional fee types disclosure pursuant to § 1005.18(b)(2)(ix)(D)(*2*). If the financial institution chooses to begin its reassessment of its fee revenue data on October 1, 2018, it would use the data it collected over the previous 24 months (October 1, 2016 to September 30, 2018) and complete its reassessment and its update, if applicable, by January 1, 2019.

18(b)(2)(ix)(E)(3) Fee Schedule Change

1. *Revised prepaid account programs.* Section 1005.18(b)(2)(ix)(E)(*3*) requires that if a financial institution revises the fee schedule for a prepaid account program, it must determine whether it reasonably anticipates that the previously disclosed additional fee types will continue to comply with the requirements of § 1005.18(b)(2)(ix) for the 24 months following implementation of the fee schedule change. A fee schedule change resets the 24-month period for assessment; a financial institution must comply with the requirements of § 1005.18(b)(2)(ix)(E)(*2*) at the end of the 24-month period following implementation of the fee schedule change. If the financial institution reasonably anticipates that the previously disclosed additional fee types will not comply with the requirements of § 1005.18(b)(2)(ix), it must update the disclosure based on its reasonable anticipation of what those additional fee types will be at the time the fee schedule change goes into effect, except as provided in the update printing exception in § 1005.18(b)(2)(ix)(E)(*4*). For example, if a financial institution lowers its card replacement fee from $4 to $3 on December 1, 2018 after having first assessed its additional fee types disclosure as of October 1, 2017, the financial institution would assess whether it reasonably anticipates that the existing additional fee types disclosure will continue to reflect the additional fee types that generate the highest revenue from consumers for that prepaid account program for the next 24 months (until December 1, 2020). If the financial institution reasonably anticipates that its additional fee types will remain unchanged over the next 24 months, the financial institution is not required to take any action with regard to the additional fee types disclosure for that prepaid account program. In the same example, if the financial institution reasonably anticipates that the previously disclosed additional fee types will not comply with the requirements of § 1005.18(b)(2)(ix) for the 24 months following implementation of the fee schedule change, the financial institution must update the listing of additional fee types at the time the fee schedule change goes into effect, except as provided in the update printing exception pursuant to § 1005.18(b)(2)(ix)(E)(*4*).

18(b)(2)(ix)(E)(4) Update Printing Exception

1. *Application of the update printing exception to prepaid accounts sold in retail locations.* Pursuant to § 1005.18(b)(2)(ix)(E)(*4*), notwithstanding the requirements to update additional fee types disclosures in § 1005.18(b)(2)(ix)(E), a financial institution is not required to update the listing of additional fee types that are provided on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced prior to a periodic reassessment and update pursuant to § 1005.18(b)(2)(ix)(E)(*2*) or prior to a fee schedule change pursuant to § 1005.18(b)(2)(ix)(E)(*3*). For prepaid accounts sold in retail locations, for example, § 1005.18(b)(2)(ix)(E)(*4*) permits a financial institution to implement any necessary updates to the listing of the additional fee types disclosures on the short form disclosure that appear on its physical prepaid account packaging materials at the time the financial institution prints new materials. Section 1005.18(b)(2)(ix)(E)(*4*) does not require financial institutions to destroy existing inventory in retail locations 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, a financial institution determines that an additional fee type listed on a short form disclosure in a retail location no longer qualifies as an additional fee type pursuant to § 1005.18(b)(2)(ix). The financial institution must update any electronic and

oral short form disclosures pursuant to the timing requirements set forth in § 1005.18(b)(2)(ix)(E). Pursuant to § 1005.18(b)(2)(ix)(E)(*4*), the financial institution may continue selling any previously printed prepaid account packages that contain the prior listing of additional fee types; prepaid account packages printed after that time must contain the updated listing of additional fee types.

18(b)(2)(x) Statement Regarding Overdraft Credit Features

1. *Short form disclosure when overdraft credit feature may be offered.* Section 1005.18(b)(2)(x) requires disclosure of a statement if a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, may be offered at any point to a consumer in connection with the prepaid account. This statement must be provided on the short form disclosures for all prepaid accounts that may offer such a feature, regardless of whether some consumers may never be solicited or qualify to enroll in such a feature.

18(b)(2)(xi) Statement Regarding Registration and FDIC or NCUA Insurance

1. *Disclosure of FDIC or NCUA insurance.* Section 1005.18(b)(2)(xi) requires a statement regarding the prepaid account program's eligibility for FDIC deposit insurance or NCUA share insurance, as appropriate, and directing the consumer to register the prepaid account for insurance and other account protections, where applicable. If the consumer's prepaid account funds are held at a credit union, the disclosure must indicate NCUA insurance eligibility. If the consumer's prepaid account funds are held at a financial institution other than a credit union, the disclosure must indicate FDIC insurance eligibility.

2. *Customer identification and verification processes.* For additional guidance on the timing of customer identification and verification processes, and on prepaid account programs for which there is no customer identification and verification process for any prepaid accounts within the prepaid account program, see § 1005.18(e)(3) and comments 18(e)–4 and –5.

18(b)(2)(xiii) Statement Regarding Information on All Fees and Services

1. *Financial institution's telephone number.* For a financial institution offering prepaid accounts at a retail location pursuant to the retail location exception in § 1005.18(b)(1)(ii), the statement required by § 1005.18(b)(2)(xiii) must also include a telephone number (and the Web site URL) that a consumer may use to directly access an oral version of the long form disclosure. To provide the long form disclosure by telephone, a financial institution could use a live customer service agent or an interactive voice response system. The financial institution could use a telephone number specifically dedicated to providing the long form disclosure or a more general customer service telephone number for the prepaid account program. For example, a financial institution would be deemed to provide direct access pursuant to § 1005.18(b)(2)(xiii) if a consumer navigates one or two prompts to reach the oral long form disclosure via a live customer service agent or an interactive voice response system using either a specifically dedicated telephone number of a more general customer service telephone number.

2. *Financial institution's Web site.* For a financial institution offering prepaid accounts at a retail location pursuant to the retail location exception in § 1005.18(b)(1)(ii), the statement required by § 1005.18(b)(2)(xiii) must also include a Web site URL (and a telephone number) that a consumer may use to directly access an electronic version of the long form disclosure. For example, a financial institution that requires a consumer to navigate various other Web pages before viewing the long form disclosure would not be deemed to provide direct access pursuant to § 1005.18(b)(2)(xiii). Trademark and product names and their commonly accepted or readily understandable abbreviations comply with the requirement in § 1005.18(b)(2)(xiii) that the URL be meaningfully named. For example, ABC or ABCard would be readily understandable abbreviations for a prepaid account program named the Alpha Beta Card.

18(b)(2)(xiv) Additional Content for Payroll Card Accounts

18(b)(2)(xiv)(A) Statement Regarding Wage or Salary Payment Options

1. *Statement options for payroll card accounts.* Section 1005.18(b)(2)(xiv)(A) requires a financial institution to include at the top of the short form disclosure for payroll card accounts, above the information required by § 1005.18(b)(2)(i) through (iv), one of two statements regarding wage payment options. Financial institutions offering payroll card accounts may choose which of the two statements required by § 1005.18(b)(2)(xiv)(A) to use in the short form disclosure. The list of other options required in the second statement might include the following, as applicable: Direct deposit to the consumer's bank account, direct deposit to the consumer's own prepaid account, paper check, or cash. A financial institution may, but is not required to, provide more specificity as to whom consumers must ask or inform of their choice of wage payment method, such as specifying the employer's Human Resources Department.

2. *Statement options for government benefit accounts.* See § 1005.15(c)(2)(i) for statement options for government benefit accounts.

3. *Statement permitted for other prepaid accounts.* A financial institution offering a prepaid account other than a payroll card account or government benefit account may, but is not required to, include a statement in the short form disclosure regarding payment options that is similar to either of the statements required for payroll card accounts pursuant to § 1005.18(b)(2)(xiv)(A) or government benefit accounts pursuant to § 1005.15(c)(2)(i). For example, a financial institution issuing a prepaid account to disburse student financial aid proceeds may disclose a statement such as the following: ''You have several options to receive your financial aid payments: Direct deposit to your bank account, direct deposit to your own prepaid card, paper check, or this prepaid card. Tell your school which option you choose.''

18(b)(2)(xiv)(B) Statement Regarding State-Required Information or Other Fee Discounts and Waivers

1. *Statement options for state-required information or other fee discounts or waivers.* Section 1005.18(b)(2)(xiv)(B) permits, but does not require, a financial institution to include in the short form disclosure for payroll card accounts one additional line of text directing the consumer to a particular location outside the short form disclosure for information on ways the consumer may access payroll card account funds and balance information for free or for a reduced fee. For example, a financial institution might include the following line of text in the short form disclosure: ''See below for free ways to access your funds and balance information'' and then list below, but on the same page as, the short form disclosure several ways consumers can access their prepaid account funds and balance information for free. Alternatively, the financial institution might direct the consumer to another location for that information, such as by stating ''See the cardholder agreement for free ways to access your funds and balance information.'' A similar statement is permitted for government benefit accounts pursuant to § 1005.15(c)(2)(ii).

18(b)(3) Short Form Disclosure of Variable Fees and Third-Party Fees and Prohibition on Disclosure of Finance Charges

18(b)(3)(i) General Disclosure of Variable Fees

1. *Short form disclosure of variable fees.* Section 1005.18(b)(3)(i) requires disclosure in the short form of the highest fee when a fee can vary, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used. For example, a financial institution provides interactive voice response (IVR) customer service for free and provides the first three live agent customer service calls per month for free, after which it charges $0.50 for each additional live agent customer service call during that month. Pursuant to § 1005.18(b)(2)(vi), the financial institution must disclose both its IVR and live agent customer service fees on the short form disclosure. The financial institution would disclose the IVR fee as $0 and the live agent customer service fee as $0.50, followed by an asterisk (or other symbol) linked to a statement explaining that the fee can be lower depending on how and where the prepaid account is used. Except as described in § 1005.18(b)(3)(ii), § 1005.18(b)(3)(i) does not permit a financial institution to describe in the short form disclosure the specific conditions under which a fee may be reduced or waived, but the financial institution could use, for example, any other part of the prepaid account's packaging or other printed materials to disclose that information. The conditions under which a fee may be lower

are required to be disclosed in the long form disclosure pursuant to § 1005.18(b)(4)(ii).

18(b)(3)(ii) Disclosure of Variable Periodic Fee

1. *Periodic fee variation alternative.* If the amount of the periodic fee disclosed in the short form pursuant to § 1005.18(b)(2)(i) could vary, a financial institution has two alternatives for disclosing the variation, as set forth in § 1005.18(b)(3)(i) and (ii). For example, a financial institution charges a monthly fee of $4.95, but waives this fee if a consumer receives direct deposit into the prepaid account or conducts 30 or more transactions during that month. Pursuant to § 1005.18(b)(3)(ii), the financial institution could list its monthly fee of $4.95 on the short form disclosure followed by a dagger symbol that links to a statement that states, for example, ''No monthly fee with direct deposit or 30 transactions per month.'' This statement may take up no more than one line of text in the short form disclosure and must be located directly above or in place of the linked statement required by § 1005.18(b)(3)(i). Alternatively, pursuant to § 1005.18(b)(3)(i), the financial institution could list its monthly fee of $4.95 on the short form disclosure followed by an asterisk that links to a statement that states, ''This fee can be lower depending on how and where this card is used.''

18(b)(3)(iii) Single Disclosure for Like Fees

1. *Alternative for two-tier fees in the short form disclosure.* Pursuant to § 1005.18(b)(3)(iii), a financial institution may opt to disclose one fee instead of the two fees required by § 1005.18(b)(2)(iii), (v), and (vi) and any two-tier fee required by § 1005.18(b)(2)(ix), when the amount is the same for both fees. The following examples illustrate how to provide a single disclosure for like fees on both the short form disclosure and the multiple service plan short form disclosure:

i. A financial institution charges $1 for both in-network and out-of-network automated teller machine withdrawals in the United States. The financial institution may list the $1 fee once under the general heading ''ATM withdrawal'' required by § 1005.18(b)(2)(iii); in that case, it need not disclose the terms ''in-network'' or ''out-of-network.''

ii. A financial institution using the multiple service plan short form disclosure pursuant to § 1005.18(b)(6)(iii)(B)(*2*) charges $1 under each of its service plans for both in-network and out-of-network automated teller machine withdrawals in the United States. The financial institution may disclose the ATM withdrawal fee on one line, instead of two, using the general heading ''ATM withdrawal'' required by § 1005.18(b)(2)(iii); in that case, it need not disclose the terms ''in-network'' or ''out-of-network.''

18(b)(3)(iv) Third-Party Fees in General

1. *General prohibition on disclosure of third-party fees in the short form.* Section 1005.18(b)(3)(iv) states that a financial institution may not include any third-party fees in a disclosure made pursuant to § 1005.18(b)(2), except for, as provided by § 1005.18(b)(3)(v), the cash reload fee required to be disclosed by § 1005.18(b)(2)(iv). Fees imposed by another party, such as a program manager, for services performed on behalf of the financial institution are not third-party fees and therefore must be disclosed pursuant to § 1005.18(b)(3)(iv). For example, if a program manager performs customer service functions for a financial institution's prepaid account program, and charges a fee for live agent customer service, that fee must be disclosed pursuant to § 1005.18(b)(2)(iv).

18(b)(3)(v) Third-Party Cash Reload Fees

1. *Updating third-party fees.* Section 1005.18(b)(3)(v) provides that a financial institution is not required to revise its short form disclosure to reflect a cash reload fee change by a third party until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the short form disclosure. For example, at the time a financial institution first prints packaging material for its prepaid account program, it discloses on the short form the $3.99 fee charged by the third-party reload network with which it contracts to provide cash reloads. Ten months later, the third-party reload network raises its cash reload fee to $4.25. The financial institution is not required to update its on-package disclosures to reflect the change in the cash reload fee until the financial institution next prints packaging materials for that prepaid account program. With respect to that financial institution's electronic and oral disclosures for that prepaid account program, the financial institution may, but is not required to, update its short form disclosure immediately upon learning of the third-party reload network's change to its cash reload fee. Alternatively, the financial institution may wait to update its electronic and oral short form disclosures to reflect the change in the cash reload fee until it otherwise updates those disclosures.

18(b)(3)(vi) Prohibition on Disclosure of Finance Charges

1. *No disclosure of finance charges in the short form.* Section 1005.18(b)(3)(vi) provides that a financial institution may not include in a disclosure made pursuant to § 1005.18(b)(2)(i) through (ix) any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61. If a financial institution imposes a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature, it must disclose on the short form for purposes of § 1005.18(b)(2)(i) through (vii) and (ix) the amount of the comparable fee rather than the higher fee. *See, e.g.,* § 1005.18(g)(2) and related commentary.

18(b)(4) Long Form Disclosure Content

18(b)(4)(ii) Fees

1. *Disclosure of all fees.* Section 1005.18(b)(4)(ii) requires a financial institution to disclose in the long form all fees that may be imposed in connection with a prepaid account, not just fees for electronic fund transfers or the right to make transfers. The requirement to disclose all fees in the long form includes any finance charges imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61 but does not include finance charges imposed on the covered separate credit feature as described in 12 CFR 1026.4(b)(11)(i). See comment 18(b)(7)(i)(B)–2 for guidance on disclosure of finance charges as part of the § 1005.18(b)(4)(ii) fee disclosure in the long form. A financial institution may also be required to include finance charges in the Regulation Z disclosures required pursuant to § 1005.18(b)(4)(vii).

2. *Disclosure of conditions.* Section 1005.18(b)(4)(ii) requires a financial institution to disclose the amount of each fee 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. Similarly, if a financial institution discloses both a periodic fee and an inactivity fee, it must indicate whether the inactivity fee will be charged in addition to, or instead of, the periodic fee. A financial institution may, but is not required to, also include on the long form disclosure additional information or limitations related to the service or feature for which a fee is charged, such as, for cash reloads, any limit on the amount of cash a consumer may load into the prepaid account in a single transaction or during a particular time period. The general requirement in § 1005.18(b)(4)(ii) does not apply to individual fee waivers or reductions granted to a particular consumer or group of consumers on a discretionary or case-by-case basis.

3. *Disclosure of a service or feature without a charge.* Pursuant to § 1005.18(b)(4)(ii), a financial institution may, but is not required to, list in the long form disclosure any service or feature it provides or offers at no charge to the consumer. For example, a financial institution may list ''online bill pay'' in its long form disclosure and indicate a fee amount of ''$0'' when the financial institution does not charge consumers a fee for that feature. By contrast, where a fee is waived or reduced under certain circumstances or where a service or feature is available for an introductory period without a fee, the financial institution may not list the fee amount as ''$0''. Rather, the financial institution must list the highest fee, accompanied by an explanation of the waived or reduced fee amount and any conditions for the waiver or discount. For example, if a financial institution waives its monthly fee for any consumer who receives direct deposit payments into the prepaid account or conducts 30 or more transactions in a given month, the long form disclosure must list the regular monthly fee amount along with an explanation that the monthly

fee is waived if the consumer receives direct deposit or conducts 30 or more transactions each month. Similarly, for an introductory fee, the financial institution would list the highest fee, and explain the introductory fee amount, the duration of the introductory period, and any conditions that apply during the introductory period.

4. *Third-party fees.* Section 1005.18(b)(4)(ii) requires disclosure in the long form of any third-party fee amounts known to the financial institution that may apply. Fees imposed by another party, such as a program manager, for services performed on behalf of the financial institution are not third-party fees and therefore must be disclosed on the long form pursuant to § 1005.18(b)(4)(ii). Also pursuant to § 1005.18(b)(4)(ii), for any third-party fee disclosed, a financial institution may, but is not required to, include either or both a statement that the fee is accurate as of or through a specific date or that the third-party fee is subject to change. For example, a financial institution that contracts with a third-party remote deposit capture service must include in the long form disclosure the amount of the fee known to the financial institution that is charged by the third party for remote deposit capture services. The financial institution may, but is not required to, also state that the third-party remote deposit capture fee is accurate as of or through a specific date, such as the date the financial institution prints the long form disclosure. The financial institution may also state that the fee is subject to change. Section 1005.18(b)(4)(ii) also provides that, if a third-party fee may apply but the amount of the fee is not known by the financial institution, it must include a statement indicating that a third-party fee may apply without specifying the fee amount. For example, a financial institution that permits out-of-network ATM withdrawals would disclose that, for ATM withdrawals that occur outside the financial institution's network, the ATM operator may charge the consumer a fee for the withdrawal, but the financial institution is not required to disclose the out-of-network ATM operator's fee amount if it does not know the amount of the fee.

18(b)(4)(iii) Statement Regarding Registration and FDIC or NCUA Insurance

1. *Statement regarding registration and FDIC or NCUA insurance, including implications thereof.* Section 1005.18(b)(4)(iii) requires that the long form disclosure include the same statement regarding prepaid account registration and FDIC or NCUA insurance eligibility required by § 1005.18(b)(2)(xi) in the short form disclosure, together with an explanation of FDIC or NCUA insurance coverage and the benefit of such coverage or the consequence of the lack of such coverage, as applicable.

i. *Bank disclosure of FDIC insurance.* For example, XYZ Bank offers a prepaid account program for sale at retail locations that is set up to be eligible for FDIC deposit insurance, but does not conduct customer identification and verification before consumers purchase the prepaid account. XYZ Bank may disclose the required statements as ''Register your card for FDIC insurance eligibility and other protections. Your funds will be held at or transferred to XYZ Bank, an FDIC-insured institution. Once there, your funds are insured up to $250,000 by the FDIC in the event XYZ Bank fails, if specific deposit insurance requirements are met and your card is registered. See *fdic.gov/deposit/deposits/prepaid.html* for details.'' Conversely, if XYZ Bank offers another prepaid account program for sale at retail locations for which it conducts customer identification and verification after purchase of the prepaid account, but the program is not set up to be eligible for FDIC insurance, XYZ Bank may disclose the required statements as ''Not FDIC insured. Your funds will be held at or transferred to XYZ Bank. If XYZ Bank fails, you are not protected by FDIC deposit insurance and could lose some or all of your money. Register your card for other protections.''

ii. *Credit union disclosure of NCUA insurance.* For example, ABC Credit Union offers a prepaid account program for sale at its own branches that is set up to be eligible for NCUA share insurance, but does not conduct customer identification and verification before consumers purchase the prepaid account. ABC Credit Union may disclose the requirement statements as ''Register your card for NCUA insurance, if eligible, and other protections. Your funds will be held at or transferred to ABC Credit Union, an NCUA-insured institution. Once there, if specific share insurance requirements are met and your card is registered, your funds are insured up to $250,000 by the NCUA in the event ABC Credit Union fails.'' See comment 18(b)(2)(xi)–1 for guidance as to when NCUA insurance coverage should be disclosed instead of FDIC insurance coverage.

18(b)(4)(vii) Regulation Z Disclosures for Overdraft Credit Features

1. *Long form Regulation Z disclosure of overdraft credit features.* Section 1005.18(b)(4)(vii) requires that the long form include the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), in accordance with the requirements for such disclosures in 12 CFR 1026.60, if, at any point, a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, may be offered to a consumer in connection with the prepaid account. If the financial institution includes the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), pursuant to § 1005.18(b)(7)(i)(B), such disclosures must appear below the disclosures required by § 1005.18(b)(4)(vi). If the disclosures provided pursuant to Regulation Z, 12 CFR 1026.60(e)(1), are provided in writing, these disclosures must be provided in the form required by 12 CFR 1026.60(a)(2), and to the extent possible, on the same page as the other disclosures required by § 1005.18(b)(4).

2. *Updates to the long form for changes to the Regulation Z disclosures.* Pursuant to § 1005.18(b)(4)(vii), a financial institution is not required to revise the disclosure required by that paragraph to reflect a change in the fees or other terms disclosed therein until such time as the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure. This exception does not extend to any finance charges imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61 that are required to be disclosed on the long form pursuant to § 1005.18(b)(4)(ii). *See* comment 18(b)(4)(ii)–1.

18(b)(5) Disclosure Requirements Outside the Short Form Disclosure

1. *Content of disclosure.* Section 1005.18(b)(5) requires that the name of the financial institution, the name of the prepaid account program, and any purchase price or activation fee for the prepaid account be disclosed outside the short form disclosure. A financial institution may, but is not required to, also disclose the name of the program manager or other service provider involved in the prepaid account program.

2. *Location of disclosure.* In addition to setting forth the required content for disclosures outside the short form disclosure, § 1005.18(b)(5) requires that, in a setting other than a retail location, the information required by § 1005.18(b)(5) must be disclosed in close proximity to the short form. For example, if the financial institution provides the short form disclosure online, the information required by § 1005.18(b)(5) is deemed disclosed in close proximity to the short form if it appears on the same Web page as the short form disclosure. If the financial institution offers the prepaid account in its own branch locations and provides the short form disclosure on the exterior of its preprinted packaging materials, the information required by § 1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if it appears on the exterior of the packaging. If the financial institution provides written short form disclosures in a manner other than on preprinted packaging materials, such as on paper, the information required by § 1005.18(b)(5) is deemed disclosed in close proximity if it appears on the same piece of paper as the short form disclosure. If the financial institution provides the short form disclosure orally, the information required by § 1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if it is provided immediately before or after disclosing the fees and information required pursuant to § 1005.18(b)(2). For prepaid accounts sold in a retail location pursuant to the retail location exception in § 1005.18(b)(1)(ii), § 1005.18(b)(5) requires the information other than purchase price be disclosed on the exterior of the access device's packaging material. If the purchase price, if any, is not also disclosed on the exterior of the packaging, disclosure of the purchase price on or near the sales rack or display for the packaging material is deemed in close proximity to the short form disclosure.

18(b)(6) Form of Pre-Acquisition Disclosures

18(b)(6)(i) General

18(b)(6)(i)(B) Electronic Disclosures

1. *Providing pre-acquisition disclosures electronically.* Section 1005.18(b)(6)(i)(B) requires electronic delivery of the disclosures required by § 1005.18(b) when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and, among other things, 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 a prepaid account via a Web site or mobile application, it would be reasonable to expect that a consumer would be able to access the disclosures required by § 1005.18(b) on the first page or via a direct link from the first page of the Web site or mobile application or on the first page that discloses the details about the specific prepaid account program. See comment 18(b)(1)(i)–2 for additional guidance on placement of the short form and long form disclosures on a Web page.

2. *Disclosures responsive to smaller screens.* In accordance with the requirement in § 1005.18(b)(6)(i)(B) that electronic disclosures be provided in a responsive form, electronic disclosures provided pursuant to § 1005.18(b) must be provided in a way that responds to different screen sizes, for example, by stacking elements of the disclosures in a manner that accommodates consumer viewing on smaller screens, while still meeting the other formatting requirements set forth in § 1005.18(b)(7). For example, the disclosures permitted by § 1005.18(b)(2)(xiv)(B) or (b)(3)(ii) must take up no more than one additional line of text in the short form disclosure. If a consumer is acquiring a prepaid account using a mobile device with a screen too small to accommodate these disclosures on one line of text in accordance with the size requirements set forth in § 1005.18(b)(7)(ii)(B), a financial institution is permitted to display the disclosures permitted by § 1005.18(b)(2)(xiv)(B) and (b)(3)(ii), for example, by stacking those disclosures in a way that responds to smaller screen sizes, while still meeting the other formatting requirements in § 1005.18(b)(7).

3. *Machine-readable text.* Section 1005.18(b)(6)(i)(B) requires that electronic disclosures must be provided using machine-readable text that is accessible via both Web browsers (or mobile applications, as applicable) and screen readers. A disclosure would not be deemed to comply with this requirement if it was not provided in a form that can be read automatically by Internet search engines or other computer systems.

18(b)(6)(ii) Retainable Form

1. *Retainable disclosures.* Section 1005.18(b)(6)(ii) requires that, except for disclosures provided orally pursuant to § 1005.18(b)(1)(ii) or (iii), long form disclosures provided via SMS as permitted by § 1005.18(b)(2)(xiii) for a prepaid account sold at retail locations pursuant to the retail location exception in § 1005.18(b)(1)(ii), and the disclosure of a purchase price pursuant to § 1005.18(b)(5) that is not disclosed on the exterior of the packaging material for a prepaid account sold at a retail location pursuant to the retail location exception in § 1005.18(b)(1)(ii), disclosures provided pursuant to § 1005.18(b) must be made in a form that a consumer may keep. For example, a short form disclosure with a tear strip running though it would not be deemed retainable because use of the tear strip to gain access to the prepaid account access device inside the packaging would destroy part of the short form disclosure. Electronic disclosures are deemed retainable if the consumer is able to print, save, and email the disclosures from the Web site or mobile application on which they are displayed.

18(b)(6)(iii) Tabular Format

18(b)(6)(iii)(B) Multiple Service Plans

18(b)(6)(iii)(B)(1) Short Form Disclosure for Default Service Plan

1. *Disclosure of default service plan excludes short-term or promotional service plans.* Section 1005.18(b)(6)(iii)(B)(*1*) provides that when a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, the information required by final § 1005.18(b)(2)(i) through (ix) may be provided in the tabular format described in final § 1005.18(b)(6)(iii)(A) for the service plan in which a consumer is initially enrolled by default upon acquiring a prepaid account. Pursuant to the requirement in § 1005.18(b)(3)(i) to disclose the highest amount a financial institution may impose for a fee disclosed pursuant to § 1005.18(b)(2)(i) through (vii) and (ix), a financial institution would not be permitted to disclose any short-term or promotional service plans as a default service plan.

18(b)(6)(iii)(B)(2) Short Form Disclosure for Multiple Service Plans

1. *Disclosure of multiple service plans.* The multiple service plan disclosure requirements in § 1005.18(b)(6)(iii)(B)(*2*) apply when a financial institution offers more than one service plan within a particular prepaid account program, each plan has a different fee schedule, and the financial institution opts not to disclose the default service plan pursuant to § 1005.18(b)(6)(iii)(B)(*1*). *See* Model Form A–10(e). For example, a financial institution that offers a prepaid account program with one service plan for which 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 may use the short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(*2*). Similarly, a financial institution that offers a prepaid account program with preferred rates or fees for the prepaid accounts of consumers who also use another non-prepaid service (*e.g.,* a mobile phone service), often referred to as ''loyalty plans,'' may also use the short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(*2*). Pricing variations based on whether a consumer elects to use a specific feature of a prepaid account, such as waiver of the monthly fee for consumers electing to receive direct deposit, does not constitute multiple service plans or a loyalty plan. See comment 18(b)(3)(iii)–1.ii for guidance on providing a single disclosure for like fees for multiple service plan short form disclosures.

18(b)(7) Specific Formatting Requirements for Pre-Acquisition Disclosures

18(b)(7)(i) Grouping

18(b)(7)(i)(B) Long Form Disclosure

1. *Conditions must be in close proximity to fee amount.* Pursuant to § 1005.18(b)(4)(ii), the long form disclosure generally must disclose all fees that may be imposed in connection with a prepaid account, including the amount of the fee and any conditions under which the fee may be imposed, waived, or reduced. Pursuant to § 1005.18(b)(7)(i)(B), text describing the conditions under which a fee may be imposed must appear in the table in the long form disclosure in close proximity to the fee amount disclosed pursuant to § 1005.18(b)(4)(ii). For example, a financial institution is deemed to comply with this requirement if the text describing the conditions is located directly to the right of the fee amount in the long form disclosure, as illustrated in Sample Form A–10(f). See comment 18(b)(6)(i)(B)–2 regarding stacking of electronic disclosures for display on smaller screen sizes.

2. *Category of function for finance charges.* Section 1005.18(b)(7)(i)(B) requires that the information required by § 1005.18(b)(4)(ii) must be generally grouped together and organized under subheadings by the categories of function for which a financial institution may impose the fee. If any finance charges may be imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61, the financial institution may, but is not required to, group all finance charges together under a single subheading. This includes situations where the financial institution imposes a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature. For example, if a financial institution charges on the prepaid account a $0.50 per transaction fee for each transaction that accesses funds in the asset feature of a prepaid account and a $1.25 per transaction fee for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction, the financial institution is permitted to disclose the $0.50 per transaction fee under a general transactional subheading and disclose the additional $0.75 per transaction fee under a separate subheading together with any other finance charges that may be imposed on the prepaid account.

18(b)(7)(ii) Prominence and Size

1. *Minimum type size.* Section 1005.18(b)(7)(ii) sets forth minimum type/

pixel size requirements for each element of the disclosures required by § 1005.18(b)(2), (b)(3)(i) and (ii), and (b)(4). A financial institution may provide disclosures in a type size larger than the required minimum to enhance consumer comprehension in any acquisition scenario, as long as the financial institution complies with the type/pixel size hierarchy set forth in § 1005.18(b)(7)(ii).

2. *''Point'' refers to printed disclosures and ''pixel'' refers to electronic disclosures.* References in § 1005.18(b)(7)(ii) to ''point'' size correspond to printed disclosures and references to ''pixel'' size correspond to disclosures provided via electronic means.

18(b)(7)(ii)(A) General

1. *Contrast required between type color and background of disclosures.* Section § 1005.18(b)(7)(ii)(A) requires that all text used to disclose information in the short form or in the long form disclosure pursuant to § 1005.18(b)(2), (b)(3)(i) and (ii), and (b)(4) must be in a single, easy-to-read type that is all black or one color and printed on a background that provides a clear contrast. A financial institution complies with the color requirements if, for example, it provides the disclosures required by § 1005.18(b)(2), (b)(3)(i) and (ii), and (b)(4) printed in black type on a white background or white type on a black background. Also, pursuant to § 1005.18(b)(7)(ii)(A), the type and color may differ between the short form disclosure and the long form disclosure provided for a particular prepaid account program. For example, a financial institution may use one font/type style for the short form disclosure for a particular prepaid account program and use a different font/type style for the long form disclosure for that same prepaid account program. Similarly, a financial institution may use black type for the short form disclosure for a particular prepaid account program and use blue type for the long form disclosure for that same prepaid account program.

18(b)(7)(iii) Segregation

1. *Permitted information outside the short form and long form disclosures.* Section 1005.18(b)(7)(iii) requires that the short form and long form disclosures required by § 1005.18(b)(2) and (4) be segregated from other information and contain only information that is required or permitted for those disclosures by § 1005.18(b). This segregation requirement does not prohibit the financial institution from providing information elsewhere on the same page as the short form disclosure, such as the information required by § 1005.18(b)(5), additional disclosures required by state law for payroll card accounts, or any other information the financial institution wishes to provide about the prepaid account. Similarly, the segregation requirement does not prohibit a financial institution from providing the long form disclosure on the same page as other disclosures or information, or as part of a larger document, such as the prepaid account agreement. *See also* § 1005.18(b)(1) and (f)(1).

18(b)(8) Terminology of Pre-Acquisition Disclosures

1. *Consistent terminology.* Section 1005.18(b)(8) requires that fee names and other terms be used consistently within and across the disclosures required by § 1005.18(b). For example, a financial institution may not name the fee required to be disclosed by § 1005.18(b)(2)(vii) an ''inactivity fee'' in the short form disclosure and a ''dormancy fee'' in the long form disclosure. However, a financial institution may substitute the term prepaid ''account'' for the term prepaid ''card,'' as appropriate, wherever it is used in § 1005.18(b).

18(b)(9) Prepaid Accounts Acquired in Foreign Languages

1. *Prepaid accounts acquired in foreign languages.* Section 1005.18(b)(9)(i) requires a financial institution to provide the pre-acquisition disclosures required by § 1005.18(b)(2) of this section in a foreign language in certain circumstances.

i. *Examples of situations in which foreign language disclosures are required.* The following examples illustrate situations in which a financial institution must provide the pre-acquisition disclosures in a foreign language in connection with the acquisition of that prepaid account:

A. The financial institution principally uses a foreign language on the packaging material of a prepaid account sold in a retail location or distributed at a bank or credit union branch, even though a few words appear in English on the packaging.

B. The financial institution principally uses a foreign language in a television advertisement for a prepaid account. That advertisement includes a telephone number a consumer can call to acquire the prepaid account, whether by speaking to a customer service representative or interacting with an interactive voice response (IVR) system.

C. The financial institution principally uses a foreign language in an online advertisement for a prepaid account. That advertisement includes a Web site URL through which a consumer can acquire the prepaid account.

D. The financial institution principally uses a foreign language on a printed advertisement for a prepaid account. That advertisement includes a telephone number or a Web site URL a consumer can call or visit to acquire the prepaid account. The pre-acquisition disclosures must be provided to the consumer in that same foreign language prior to the consumer acquiring the prepaid account.

E. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer calls the financial institution and has the option to proceed with the prepaid account acquisition process in a foreign language, whether by speaking to a customer service representative or interacting with an IVR system.

F. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer visits the financial institution's Web site. On that Web site, the consumer has the option to proceed with the prepaid account acquisition process in a foreign language.

ii. *Examples of situations in which foreign language disclosures are not required.* The following examples illustrate situations in which a financial institution is not required to provide the pre-acquisition disclosures in a foreign language:

A. A consumer visits the financial institution's branch location in person and speaks to an employee in a foreign language about acquiring a prepaid account. The consumer proceeds with the acquisition process in that foreign language.

B. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer calls the financial institution's customer service line and speaks to a customer service representative in a foreign language. However, if the customer service representative proceeds with the prepaid account acquisition process over the telephone, the financial institution would be required to provide the pre-acquisition disclosures in that foreign language.

C. The financial institution principally uses a foreign language in an advertisement for a prepaid account. That advertisement includes a telephone number a consumer can call to acquire the prepaid account. The consumer calls the telephone number provided on the advertisement and has the option to proceed with the prepaid account acquisition process in English or in a foreign language. The consumer chooses to proceed with the acquisition process in English.

2. *Principally used.* All relevant facts and circumstances determine whether a foreign language is principally used by the financial institution to advertise, solicit, or market under § 1005.18(b)(9). Whether a foreign language is principally used is determined at the packaging material, advertisement, solicitation, or marketing communication level, not at the prepaid account program level or across the financial institution's activities as a whole. A financial institution that advertises a prepaid account program in multiple languages would evaluate its use of foreign language in each advertisement to determine whether it has principally used a foreign language therein.

3. *Advertise, solicit, or market a prepaid account.* Any commercial message, appearing in any medium, that promotes directly or indirectly the availability of prepaid accounts constitutes advertising, soliciting, or marketing for purposes of § 1005.18(b)(9). Examples illustrating advertising, soliciting, or marketing include, but are not limited to:

i. Messages in a leaflet, promotional flyer, newspaper, or magazine.

ii. Electronic messages, such as on a Web site or mobile application.

iii. Telephone solicitations.

iv. Solicitations sent to the consumer by mail or email.

v. Television or radio commercials.

4. *Information in the long form disclosure in English.* Section 1005.18(b)(9)(ii) states that a financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to

§ 1005.18(b)(9)(i) must also provide the information required to be disclosed in its pre-acquisition long form disclosure pursuant to § 1005.18(b)(4) in English upon a consumer's request and on any part of the Web site where it discloses this information in a foreign language. A financial institution may, but is not required to, provide the English version of the information required by § 1005.18(b)(4) in accordance with the formatting, grouping, size and other requirements set forth in § 1005.18(b) for the long form disclosure.

18(c) Access to Prepaid Account Information

1. *Posted transactions.* The electronic and written history of the consumer's account transactions provided under § 1005.18(c)(1)(ii) and (iii), respectively, shall reflect transfers once they have been posted to the account. Thus, a financial 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 made available 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, a financial institution satisfies the requirement if it provides electronic history on a Web site in a format that is capable of being printed or stored electronically using a web browser.

3. *Written history.* Requests that exceed the requirements of § 1005.18(c)(1)(iii) for providing written account transaction history, and which therefore 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 transaction history made in a single calendar month. For example, if a consumer requests written account transaction history on June 1 and makes another request 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 written account transaction history on June 1 and then makes another 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 response in the same month.

ii. If a financial institution maintains more than 24 months of written account transaction history, it may assess a fee or charge to the consumer for providing a written history for transactions occurring more than 24 months preceding the date the financial institution receives the consumer's request, provided the consumer specifically requests the written account transaction history for that time period.

iii. If a financial institution offers a consumer the ability to request automatic mailings of written account transaction history on a monthly or other periodic basis, it may assess a fee or charge for such automatic mailings but not for the written account transaction history requested pursuant to § 1005.18(c)(1)(iii). *See* comment 18(c)–6.

4. *12 months of electronic account transaction history.* Section 1005.18(c)(1)(ii) requires a financial institution to make available at least 12 months of account transaction history electronically. If a prepaid account has been opened for fewer than 12 months, the financial institution need only provide electronic account transaction history pursuant to § 1005.18(c)(1)(ii) since the time of account opening. If a prepaid account is closed or becomes inactive, as defined by the financial institution, the financial institution need not make available electronic account transaction history. *See* comment 9(b)–3. If an inactive account becomes active, the financial institution must again make available 12 months of electronic account transaction history.

5. *24 months of written account transaction history.* Section 1005.18(c)(1)(iii) requires a financial institution to provide at least 24 months of account transaction history in writing upon the consumer's request. A financial institution may provide fewer than 24 months of written account transaction history if the consumer requests a shorter period of time. If a prepaid account has been opened for fewer than 24 months, the financial institution need only provide written account transaction history pursuant to § 1005.18(c)(1)(iii) since the time of account opening. Even if a prepaid account is closed or becomes inactive, the financial institution must continue to provide upon request at least 24 months of written account transaction history preceding the date the request is received. When a prepaid account has been closed or inactive for 24 months or longer, the financial institution is no longer required to make available any written account transaction history pursuant to § 1005.18(c)(1)(iii).

6. *Periodic statement alternative for unverified prepaid accounts.* For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to provide a written history of the consumer's account transactions for any prepaid account for which the financial institution has not completed its consumer identification and verification process as described in § 1005.18(e)(3)(i)(A) through (C). If a prepaid account is verified, a financial institution must provide written account transaction history upon the consumer's request that includes the period during which the account was not verified, provided that the period is within the 24-month time frame specified in § 1005.18(c)(1)(iii).

7. *Inclusion of all fees charged.* A financial institution that furnishes a periodic statement pursuant to § 1005.9(b) for a prepaid account must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on the periodic statement as well as on any electronic or written account transaction history the financial institution makes available or provides to the consumer. For example, if a financial institution sends periodic statements and also makes available the consumer's electronic account transaction history on its Web site, the financial institution must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on the periodic statement and on the consumer's electronic account transaction history made available on its Web site. Likewise, a financial institution that follows the periodic statement alternative in § 1005.18(c)(1) must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on the electronic history of the consumer's account transactions made available pursuant to § 1005.18(c)(1)(ii) and any written history of the consumer's account transactions provided pursuant to § 1005.18(c)(1)(iii).

8. *Summary totals of fees.* Section 1005.18(c)(5) requires a financial institution to disclose a summary total of the amount of all fees assessed by the financial institution against a prepaid account for the prior calendar month and for the calendar year to date.

i. *Generally.* A financial institution that furnishes a periodic statement pursuant to § 1005.9(b) for a prepaid account must display the monthly and annual fee totals on the periodic statement as well as on any electronic or written account transaction history the financial institution makes available or provides to the consumer. For example, if a financial institution sends periodic statements and also makes available the consumer's electronic account transaction history on its Web site, the financial institution must display the monthly and annual fee totals on the periodic statement and on the consumer's electronic account transaction history made available on its Web site. Likewise, a financial institution that follows the periodic statement alternative in § 1005.18(c)(1) must display the monthly and annual fee totals on the electronic history of the consumer's account transactions made available pursuant to § 1005.18(c)(1)(ii) and any written history of the consumer's account transactions provided pursuant to § 1005.18(c)(1)(iii). If a financial institution provides periodic statements pursuant to § 1005.9(b), fee totals may be disclosed for each statement period rather than each calendar month, if different. The summary totals of fees should be net of any fee reversals.

ii. *Third-party fees.* A financial institution may, but is not required to, include third-party fees in its summary totals of fees provided pursuant to § 1005.18(c)(5). For example, a financial institution must include in the summary totals of fees the fee it charges a consumer for using an out-of-network ATM, but it need not include any fee charged by an ATM operator, with whom the financial institution has no relationship, for the consumer's use of that operator's ATM. Similarly, a financial institution need not include in the summary totals of fees the fee charged by a third-party reload network for the service of adding cash to a prepaid account at a point-of-sale terminal. A financial institution may, but is not required to, inform consumers of third-party fees such as by providing a disclaimer to indicate that the summary totals do not include certain third-party fees or to explain when third-

party fees may occur or through some other method.

9. *Display of summary totals of fees.* A financial institution may, but is not required to, also include sub-totals of the types of fees that make up the summary totals of fees as required by § 1005.18(c)(5). For example, if a financial institution distinguishes optional fees (*e.g.,* custom card design fees) from fees to use the account, in displaying the summary totals of fees, the financial institution may include sub-totals of those fees, provided the financial institution also presents the combined totals of all fees.

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 received more than 60 days after the earlier of the date the consumer electronically accesses the account transaction history or the date the financial institution sends a written account transaction 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. *Verification of accounts.* Section 1005.18(e)(3) provides that for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution need not extend provisional credit for any prepaid account for which it has not completed its collection of consumer identification and verification process. Consumer identifying information may include the consumer's full name, address, date of birth, and Social Security number or other government-issued identification number.

5. *Financial institution has not completed verification.* Section 1005.18(e)(3)(ii)(A) states that, provided it discloses to the consumer the risks of not registering a prepaid account, a financial institution has not completed its consumer identification and verification process where it has not concluded the process with respect to a particular consumer. For example, a financial institution initiates the identification and verification process by collecting identifying information about a consumer and informing the consumer of the nature of the outstanding information, but despite efforts to obtain additional information from the consumer, the financial institution is unable to conclude the process because of conflicting information about the consumer's current address. As long as the information needed to complete the verification process remains outstanding, the financial institution has not concluded its consumer identification and verification process with respect to that consumer. 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.

6. *Account verification prior to acquisition.* A financial institution that collects and verifies consumer identifying information, or that obtains such information after it has been collected and verified by a third party, prior to or as part of the account acquisition process, is deemed to have completed its consumer identification and verification process with respect to that account. For example, a university contracts with a financial institution to disburse financial aid to students via the financial institution's prepaid accounts. To facilitate the accurate disbursal of aid awards, the university provides the financial institution with identifying information about the university's students, whose identities the university had previously verified. The financial institution is deemed to have completed its consumer identification and verification process with respect to those accounts.

18(f) Disclosure of Fees and Other Information

1. *Initial disclosure of fees and other information.* Section 1005.18(f)(1) requires a financial institution to include, as part of the initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed in its pre-acquisition long form disclosure pursuant to § 1005.18(b)(4). Section 1005.18(b)(4)(ii) requires a financial institution to disclose in its pre-acquisition long form disclosure all fees imposed in connection with a prepaid account. Section 1005.18(b)(4) also contains several specific statements that must be provided as part of the long form disclosure. A financial institution may, but is not required to, disclose the information required by § 1005.18(b)(4) in accordance with the formatting, grouping, size and other requirements set forth in § 1005.18(b) for the long form disclosure as part of its initial disclosures provided pursuant to § 1005.7; a financial institution may choose to do so, however, in order to satisfy other requirements in § 1005.18. See, *e.g.,* § 1005.18(b)(1)(ii) regarding the retail location exception.

2. *Changes to the Regulation Z disclosures for overdraft credit features.* Pursuant to § 1005.18(f)(2), if a financial institution provides pursuant § 1005.18(f)(1) the Regulation Z disclosures required by § 1005.18(b)(4)(vii) for an overdraft credit feature, the financial institution is not required to provide a change-in-terms notice solely to reflect a change in the fees or other terms disclosed therein. This exception does not extend to any finance charges imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61 that are required to be disclosed pursuant to § 1005.18(b)(4)(ii). *See* comment 18(b)(4)(ii)–1.

3. *Web site and telephone number on a prepaid account access device.* Section 1005.18(f)(3) requires that the name of a financial institution and the Web site URL 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. 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. The financial institution must provide this information to allow consumers to, for example, contact the financial institution to learn about the terms and conditions of the prepaid account, obtain prepaid account balance information, request a copy of transaction history pursuant to § 1005.18(c)(1)(iii) if the financial institution does not provide periodic statements pursuant to § 1005.9(b), or to notify the financial institution when the consumer believes that an unauthorized electronic fund transfer has occurred as required by §§ 1005.7(b)(2) and 1005.18(d)(1)(ii).

18(g) Prepaid Accounts Accessible by Hybrid Prepaid-Credit Cards

1. *Covered separate credit feature accessible by a hybrid prepaid-credit card.* Regulation Z, 12 CFR 1026.61, defines the term covered separate credit feature accessible by a hybrid prepaid-credit card.

2. *Asset feature.* i. Regulation Z, 12 CFR 1026.61(a)(5)(ii), defines the term asset feature.

ii. Section 1005.18(g) applies to account terms, conditions, and features that apply to the asset feature of the prepaid account. Section 1005.18(g) does not apply to the account terms, conditions, or features that apply to the covered separate credit feature, regardless of whether it is structured as a separate credit account or as a credit subaccount of the prepaid account that is separate from the asset feature of the prepaid account.

3. *Scope of § 1005.18(g).* Under § 1005.18(g), a financial institution may offer different terms on different prepaid account programs. For example, the terms may differ between a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program, and a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts.

4. *Variation in account terms, conditions, or features.* i. Account terms, conditions, and features subject to § 1005.18(g) include, but are not limited to:

A. Interest paid on funds deposited into the asset feature of the prepaid account, if any;

B. Fees or charges imposed on the asset feature of the prepaid account. See comment 18(g)–5 for additional guidance on how § 1005.18(g) applies to fees or charges imposed on the asset feature of the prepaid account.

C. The type of access device provided to the consumer. For instance, an institution may not provide a PIN-only card on prepaid accounts without a covered separate credit feature that is accessible by a hybrid prepaid-credit card, while providing a prepaid card with both PIN and signature-debit functionality for prepaid accounts in the same prepaid account program with such a credit feature;

D. Minimum balance requirements on the asset feature of the prepaid account; or

E. Account features offered in connection with the asset feature of the prepaid account, such as online bill payment services.

5. *Fees.* i. With respect to a prepaid account program where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by Regulation Z, 12 CFR 1026.61, § 1005.18(g) only permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program that do not have a such a credit feature. Section 1005.18(g) prohibits a financial institution from imposing a lower fee or charge on prepaid accounts with a covered separate credit feature than the amount of a comparable fee or charge it charges on prepaid accounts in the same prepaid account program without such a credit feature. With regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, a fee or charge imposed on the asset feature of the prepaid account generally is a finance charge under Regulation Z (12 CFR part 1026) to the extent that the amount of the fee or charge exceeds the amount of a comparable fee or charge imposed on prepaid accounts in the same prepaid account program that do not have such a credit feature. *See* Regulation Z, 12 CFR 1026.4(b)(11)(ii). With regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, this comment below provides illustrations of how § 1005.18(g) applies to fees or charges imposed on the asset feature of a prepaid account. The term ''non-covered separate credit feature'' refers to a separate credit feature that is not accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61.

ii. The following examples illustrate how § 1005.18(g) applies to per transaction fees for each transaction to access funds available in the asset feature of the prepaid account.

A. Assume that a consumer has selected a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered. For prepaid accounts without such a credit feature, the financial institution charges $0.50 for each transaction conducted that accesses funds available in the prepaid account. For prepaid accounts with a credit feature, the financial institution also charges $0.50 on the asset feature for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, for purposes of § 1005.18(g), the financial institution is imposing the same fee for each transaction that accesses funds in the asset feature of the prepaid account, regardless of whether the prepaid account has a covered separate credit feature accessible by a hybrid prepaid-credit card. Also, with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in Regulation Z, 12 CFR 1026.61, the $0.50 per transaction fee imposed on the asset feature for each transaction that accesses funds available in the asset feature of the prepaid account is not a finance charge under 12 CFR 1026.4(b)(11)(ii). See Regulation Z, 12 CFR 1026.4(b)(11)(ii) and comment 4(b)(11)(ii)–1, for a discussion of the definition of finance charge with respect to fees or charges imposed on the asset feature of a prepaid account with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

B. Same facts as in paragraph A, except that for prepaid accounts with a covered separate credit feature, the financial institution imposes a $1.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, the financial institution is permitted to charge a higher fee under § 1005.18(g)(2) on prepaid accounts with a covered separate credit feature than it charges on prepaid accounts without such a credit feature. The $0.75 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

C. Same facts as in paragraph A, except that for prepaid accounts with a covered separate credit feature, the financial institution imposes a $0.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, the financial institution is in violation of § 1005.18(g) because it is imposing a lower fee on the asset feature of a prepaid account with a covered separate credit feature than it imposes on prepaid accounts in the same program without such a credit feature.

iii. Where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, any per transaction fees imposed on the asset feature of prepaid accounts, including load and transfer fees, with such a credit feature are comparable only to per transaction fees for each transaction to access funds in the asset feature of a prepaid account that are imposed on prepaid accounts in the same prepaid account program that does not have such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from a source other than the funds in the asset feature are not comparable for purposes of § 1005.18(g). To illustrate:

A. Assume a financial institution charges $0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature. Also, assume that the financial institution charges $0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, for purposes of § 1005.18(g), the financial institution is imposing the same fee for each transaction it pays, regardless of whether the transaction accesses funds available in the asset feature of the prepaid accounts without a covered separate credit feature, or is paid from credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. Also, for purposes of Regulation Z, 12 CFR 1026.4(b)(11)(ii), the $0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge.

B. Assume same facts as in paragraph A above, except that assume the financial

institution charges $1.25 on the asset feature of a prepaid account for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. The financial institution is permitted to charge the higher fee under § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction that accesses funds available in the asset feature of the prepaid accounts without such a credit feature. The $0.75 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

C. Same facts as in paragraph A, except that the financial institution imposes $0.25 on the asset feature of the prepaid account for each transaction conducted where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. In this case, the financial institution is in violation of § 1005.18(g) because it is imposing a lower fee on the asset feature of a prepaid account with a covered separate credit feature than the amount of the comparable fee it imposes on prepaid accounts in the same program without such a credit feature.

D. Assume a financial institution charges $0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature. Assume also that the financial institution charges both a $0.50 per transaction fee and a $1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.,* a combined fee of $1.75 per transaction) must be compared to the $0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. The financial institution is permitted to charge a higher fee under § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction that accesses funds available in the asset feature of the prepaid accounts without such a credit feature. The $1.25 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

E. Assume same facts as in paragraph D above, except that assume the financial institution also charges a load fee of $1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature, in addition to charging a $0.50 per transaction fee. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.,* a combined fee of $1.75 per transaction) must be compared to the per transaction fee (*i.e.,* the fee of $0.50) to access funds available in the asset feature of the prepaid accounts on a prepaid account without a covered separate credit feature. Per transaction fees for a transaction that is conducted by drawing funds into a prepaid account from some other source (*i.e.,* the fee of $1.25) are not comparable for purposes of § 1005.18(g). The financial institution is permitted to charge a higher fee under § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction to access funds available in the asset feature of the prepaid accounts without such a credit feature. The $1.25 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

iv. A consumer may choose in a particular circumstance to draw or transfer credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct person-to-person transfers. For example, a consumer may use the prepaid card at the financial institution's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. *See* Regulation Z, 12 CFR 1026.61(a)(2)(i)(B) and comment 61(a)(2)–4.ii. In these situations, load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction are compared only with fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of § 1005.18(g). To illustrate:

A. Assume a financial institution charges a $1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the financial institution charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (*i.e.,* the fee of $1.25) is compared with the fees to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature (*i.e.,* the fee of $0). Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (*i.e.,* the fee of $1.25) is not comparable for purposes of § 1005.18(g). In this case, the financial institution is permitted to charge a higher fee under § 1005.18(g) for transactions that access the covered separate credit feature on prepaid accounts with a credit feature than the amount of the comparable fee it charges on prepaid accounts in the same program without such a credit feature. The $1.25 fee imposed on the asset feature of the prepaid account with a separate credit feature is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

B. Assume that a financial institution charges a $1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the financial institution charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (*i.e.,* the fee of $1.25) is compared with the fees to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature (*i.e.,* the fee of $0). Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (*i.e.,* the fee of $1.25) is not comparable for purposes of § 1005.18(g). In this case, the financial institution is permitted to charge a higher fee under § 1005.18(g) for transactions that access the covered separate credit feature on prepaid accounts with a credit feature than the amount of the comparable fee it charges on prepaid accounts in the same program without such a credit feature. The $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

18(h) Effective Date and Special Transition Rules for Disclosure Provisions

1. *Disclosures not on prepaid account access devices and prepaid account packaging materials.* Section 1005.18(h)(1) provides that, except as provided in § 1005.18(h)(2) and (3), the disclosure requirements of subpart A, as modified by § 1005.18, apply to prepaid accounts as defined in § 1005.2(b)(3), including government benefit accounts subject to § 1005.15, beginning October 1, 2017. This effective date applies to disclosures made available or provided to consumers electronically, orally by telephone, or in a form other than on pre-printed materials, such as disclosures printed on paper by a financial institution upon a consumer's request.

2. *Disclosures on prepaid account access devices and prepaid account packaging materials.* Section 1005.18(h)(2)(i) provides that the disclosure requirements of subpart A, as modified by § 1005.18, do not apply to any disclosures that are provided, or that would otherwise be required to be provided, on prepaid account access devices, or on, in, or with prepaid account packaging materials

that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017. This includes, for example, disclosures contained on or in packages for prepaid accounts sold at retail, or disclosures for payroll card accounts or government benefit accounts that are distributed to employees or benefits recipients in packages or envelopes. Disclosures and access devices that are manufactured, printed, or otherwise produced on or after October 1, 2017 must comply with all the requirements of subpart A.

3. *Form of notice to consumers.* A financial institution that is required to notify consumers of a change in terms and conditions pursuant to § 1005.18(h)(2)(ii) or (iii), or that otherwise provides updated initial disclosures as a result of § 1005.18(h)(1) taking effect, may provide the notice or disclosures either as a separate document or included in another notice or mailing that the consumer receives regarding the prepaid account to the extent permitted by other laws and regulations.

4. *Ability to contact the consumer.* A financial institution that has not obtained the consumer's contact information is not required to comply with the requirements set forth in § 1005.18(h)(2)(ii) or (iii). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

5. *Closed and inactive prepaid accounts.* The requirements of § 1005.18(h)(2)(iii) do not apply to prepaid accounts that are closed or inactive, as defined by the financial institution. However, if an inactive account becomes active, the financial institution must comply with the applicable portions of those provisions within 30 days of the account becoming active again in order to avail itself of the timing requirements and accommodations set forth in§ 1005.18(h)(2)(iii) and (iv).

6. *Account information not available on October 1, 2017.* i. *Electronic and written account transaction history.* A financial institution following the periodic statement alternative in § 1005.18(c) must make available 12 months of electronic account transaction history pursuant to § 1005.18(c)(1)(ii) and must provide 24 months of written account transaction history upon request pursuant to § 1005.18(c)(1)(iii) beginning October 1, 2017. If, on October 1, 2017, the financial institution does not have readily accessible the data necessary to make available or provide the account histories for the required time periods, the financial institution may make available or provide such histories using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with the requirements set forth in § 1005.18(c)(1)(ii) and (iii). For example, a financial institution that had been retaining only 60 days of account history before October 1, 2017 would provide 60 days of written account transaction history upon a consumer's request on October 1, 2017. If, on November 1, 2017, the consumer made another request for written account transaction history, the financial institution would be required to provide three months of account history. The financial institution must continue to provide as much account history as it has accumulated at the time of a consumer's request until it has accumulated 24 months of account history. Thus, all financial institutions must fully comply with the electronic account transaction history requirement set forth in § 1005.18(c)(1)(ii) no later than October 1, 2018 and must fully comply with the written account transaction history requirement set forth in § 1005.18(c)(1)(iii) no later than October 1, 2019.

ii. *Summary totals of fees.* A financial institution must display a summary total of the amount of all fees assessed by the financial institution on the consumer's prepaid account for the prior calendar month and for the calendar year to date pursuant to § 1005.18(c)(5) beginning October 1, 2017. If, on October 1, 2017, the financial institution does not have readily accessible the data necessary to calculate the summary totals of fees for the prior calendar month or the calendar year to date, the financial institution may provide the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by § 1005.18(c)(5). That is, the financial institution would first display the monthly fee total beginning on November 1, 2017 for the month of October, and the year-to-date fee total beginning on October 1, 2017, provided the financial institution discloses that it is displaying the year-to-date total beginning on October 1, 2017 rather than for the entire calendar year 2017. On January 1, 2018, financial institutions must begin displaying year-to-date fee totals for calendar year 2018.

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 changes to provisions regarding authorized users or assignment of the agreement.

vi. Changes to the corporate name of the issuer or program manager, or to the issuer's address or identifying number, such as its RSSD ID number or tax identification number.

vii. Changes to the names of other relevant parties, such as the employer for a payroll card program or the agency for a government benefit program.

viii. Changes to the name of the prepaid account program to which the agreement applies.

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 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. Reordering sections of the agreement without affecting the meaning of any terms of the agreement.

v. Adding, removing, or modifying a table of contents or index.

vi. 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 of issuer, Bank is the issuer of these prepaid accounts for purposes of § 1005.19. However, Program Manager services the prepaid accounts, including mailing to consumers account opening materials and making available to consumers their electronic account transaction history, 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. *Third-party 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 making available to consumers their electronic account transaction history, 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 of issuer, Bank is the issuer of 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 account transaction history, 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 by Bank 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)(6) Offers to the General Public

1. *Prepaid accounts offered to limited groups.* An issuer is deemed to offer a prepaid account agreement to the general public even if the issuer markets, solicits applications for, or otherwise makes available prepaid accounts only to a limited group of persons. For example, an issuer may solicit only residents of a specific geographic location for a particular prepaid account; in this case, the agreement would be considered to be offered to the general public. Similarly, agreements for prepaid accounts issued by a credit union are considered to be offered to the general public even though such prepaid accounts are available only to credit union members.

2. *Prepaid account agreements not offered to the general public.* A prepaid account agreement is not offered to the general public when a consumer is offered the agreement only by virtue of the consumer's relationship with a third party. Examples of agreements not offered to the general public include 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.

19(a)(7) Open Account

1. *Open account.* A prepaid account is an open 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 from a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, in connection with a prepaid account. Under this definition, an account that meets any of these criteria is considered to be open even if the account is deemed inactive by the issuer.

19(a)(8) 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 a government benefit account as defined in §§ 1005.2(b)(3)(iii) and 1005.15(a)(2).

19(b) Submission of Agreements to the Bureau

19(b)(1) Submissions on a Rolling Basis

1. *Rolling submission requirement.* Section 1005.19(b)(1) requires issuers to send submissions to the Bureau no later than 30 days after offering, amending, or ceasing to offer any prepaid account agreement, as described in § 1005.19(b)(1)(ii) through (iv). For example, if on July 1 an issuer offers a prepaid account agreement that has not been previously submitted to the Bureau, it must submit that agreement to the Bureau by July 31 of the same year. Similarly, if on August 1 an issuer amends a prepaid account agreement previously submitted to the Bureau, and the change becomes effective on September 15, the issuer must submit the entire amended agreement as required by § 1005.19(b)(2) by October 15 of the same year. Furthermore, if on December 31 an issuer ceases to offer a prepaid account agreement that was previously submitted to the Bureau, it must submit notification to the Bureau that it is withdrawing that agreement as required by § 1005.19(b)(3) by January 30 of the following year.

2. *Prepaid accounts offered in conjunction with multiple issuers.* If a program manager offers prepaid account agreements in conjunction with multiple issuers, each issuer must submit its own agreement to the Bureau. Alternatively, each issuer may use the program manager to submit the agreement on its behalf, in accordance with comment 19(a)(4)–2.

19(b)(2) Amended Agreements

1. *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. 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.

19(b)(3) Withdrawal of Agreements No Longer Offered

1. *No longer offers agreement.* Section 1005.19(b)(3) provides that, if an issuer no longer offers an agreement that was previously submitted to the Bureau, the issuer must notify the Bureau no later than 30 days after the issuer ceases to offer the agreement that it is withdrawing the agreement. An issuer no longer offers an agreement when it no longer allows a consumer to activate or register a new account in connection with that agreement.

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. For example, an issuer has 2,000 open

prepaid accounts. The issuer is not required to submit any agreements to the Bureau because the issuer qualifies for the de minimis exception.

3. *Date for determining whether issuer qualifies.* Whether an issuer qualifies for the de minimis exception is determined as of the last day of each calendar quarter. For example, an issuer has 2,500 open prepaid accounts as of December 31, the last day of the calendar quarter. As of January 30, the issuer has 3,100 open prepaid accounts. As of March 31, the last day of the following calendar quarter, the issuer has 2,700 open prepaid accounts. Even though the issuer had 3,100 open prepaid accounts at one time during the calendar quarter, the issuer qualifies for the de minimis exception because the number of open prepaid accounts was less than 3,000 as of March 31. The issuer therefore is not required to submit any agreements to the Bureau under § 1005.19(b)(1).

4. *Date for determining whether issuer ceases to qualify.* Whether an issuer ceases to qualify for the de minimis exception under § 1005.19(b)(4) is determined as of the last day of the calendar quarter. For example, an issuer has 2,500 open prepaid accounts as of June 30, the last day of the calendar quarter. The issuer is not required to submit any agreements to the Bureau under § 1005.19(b) by July 30 (the 30th day after June 30) because the issuer qualifies for the de minimis exception. As of July 15, the issuer has 3,100 open prepaid accounts. The issuer is not required to take any action at this time, because whether an issuer qualifies for the de minimis exception under § 1005.19(b)(4) is determined as of the last day of the calendar quarter. The issuer still has 3,100 open prepaid accounts as of September 30. Because the issuer had 3,100 open prepaid accounts as of September 30, the issuer ceases to qualify for the de minimis exception and must submit its agreements to the Bureau by October 30, the 30th day after the last day of the calendar quarter.

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 newly qualifies for the de minimis exception, the issuer must continue to make rolling 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 example, an issuer offers three agreements and has 3,001 open accounts as of December 31. The issuer submitted each of the three agreements to the Bureau by January 30 as required under § 1005.19(b). As of March 31, the issuer has only 2,999 open accounts. The issuer has two options. First, the issuer may notify the Bureau that the issuer is withdrawing each of the three agreements it previously submitted. Once the issuer has notified the Bureau, the issuer is no longer required to make rolling submissions to the Bureau under § 1005.19(b) unless it later ceases to qualify for the de minimis exception. Alternatively, the issuer may choose not to notify the Bureau that it is withdrawing its agreements. In this case, the issuer must continue making rolling submissions to the Bureau as required by § 1005.19(b). The issuer might choose not to withdraw its agreements if, for example, the issuer believes it will likely cease to qualify for the de minimis exception again in the near future.

19(b)(6) Form and Content of Agreements Submitted to the Bureau

1. *Agreements currently in effect.* Agreements submitted to the Bureau must contain the provisions of the agreement and fee information currently in effect. 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. The change in that fee will become effective on August 1. The issuer must submit and post the amended agreement with the decreased out-of-network ATM withdrawal fee to the Bureau by August 31 as required by § 1005.19(b)(2) and (c).

2. *Fee information 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. For example, an issuer offers a prepaid account with a monthly fee of $4.95 or $0 if the consumer regularly receives direct deposit to the prepaid account. The issuer must submit to the Bureau one agreement with fee information listing the possible monthly fees of $4.95 or $0 and including the explanation that the latter fee is dependent upon the consumer regularly receiving direct deposit.

3. *Integrated agreement requirement.* Issuers may not submit 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 on January 1 and subsequently submit a change-in-terms notice or an addendum to indicate amendments to the previously submitted agreement. 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 General Public

1. *Requirement applies only to agreements offered to the general public.* An issuer is only required to post and maintain on its publicly available Web site the prepaid account agreements that the issuer offers to the general public as defined by § 1005.19(a)(6) and must submit to the Bureau under § 1005.19(b). For agreements not offered to the general public, the issuer is not required to post and maintain the agreements on its publicly available Web site, but is still required to provide each individual consumer with access to his or her specific prepaid account agreement under § 1005.19(d). This posting requirement is distinct from that of § 1005.7, as modified by § 1005.18(f)(1), 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, and the change-in-terms notice required under § 1005.8(a), as modified by § 1005.18(f)(2). This requirement is also distinct from that of § 1005.18(b)(4), 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. Additionally, if 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) or the agreement qualifies for the product testing exception under § 1005.19(b)(5), 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.

2. *Issuers that do not otherwise maintain Web sites.* If an issuer offers an agreement to the general public as defined by § 1005.19(a)(6), that issuer must post that agreement 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. For example, an issuer that is not required to post agreements on its Web site 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 would not be required to be posted on the issuer's Web site, but would still need to be provided to the consumer to whom it applies under § 1005.19(d). Additionally, an issuer is not required to post on its Web site agreements not offered to the general public, such as agreements for payroll card accounts and government benefit accounts, as explained in comment 19(c)–1, but the issuer must still provide consumers with access to their specific agreements under § 1005.19(d).

2. *Agreements sent to consumers.* Section 1005.19(d)(1)(ii) provides, in part, that if an issuer makes an agreement available upon request, the issuer must send 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. If the issuer mails the agreement, the agreement must be posted in the mail five business days after the issuer receives the consumer's request. If the issuer hand delivers or provides the agreement electronically, the agreement must be hand delivered or provided electronically five business days after the issuer receives the consumer's request. For example, if the issuer emails the agreement, the email with the attached agreement must be sent no later than five business days after the issuer receives the consumer's request.

19(f) Effective Date

1. *Delayed effective date for the agreement submission requirement.* Section 1005.19(f)(2) provides that the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to § 1005.19(b) is delayed until October 1, 2018. An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018. After October 1, 2018, issuers must submit on a rolling basis prepaid account agreements or notifications of withdrawn agreements to the Bureau within 30 days after offering, amending, or ceasing to offer the agreements.

2. *Continuing obligation to post and provide consumer agreements.* Pursuant to § 1005.19(f)(3), during the delayed agreement submission period set forth in § 1005.19(f)(2), an issuer must post agreements on its Web site as required by § 1005.19(c) and (d)(1)(i) using the agreements it would have otherwise submitted to the Bureau under § 1005.19(b) and must provide a copy of the consumer's agreement to the consumer upon request pursuant to § 1005.19(d)(1)(ii). For purposes of § 1005.19(c)(2) and (d)(2), agreements posted by an issuer on its Web site must conform to the form and content requirements set forth in § 1005.19(b)(6). For purposes of § 1005.19(c)(3) and (d)(2)(v), amended agreements must be posted to the issuer's Web site no later than 30 days after the change becomes effective as required by § 1005.19(b)(2).

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Section 1005.30 Remittance Transfer Definitions

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30(c) Designated Recipient

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ii. For transfers to a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), where the funds are to be received in a location physically outside of any State depends on whether the provider at the time the transfer is requested has information indicating that funds are to be received in a foreign country. See comments 30(c)–2.iii and 30(e)–3.i.C for illustrations of when a remittance transfer provider would have such information and when the provider would not. For transfers to all other accounts, whether funds are to be received at a location physically outside of any State depends on where the account is located. If the account is located in a State, the funds will not be received at a location in a foreign country. Further, for these accounts, if they are located on a U.S. military installation that is physically located in a foreign country, then these accounts are located in a State.

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30(g) Sender

1. *Determining whether a consumer is located in a State.* Under § 1005.30(g), the definition of ''sender'' means a consumer in a State who, primarily for personal, family, or household purposes, requests a remittance transfer provider to send a remittance transfer to a designated recipient. A sender located on a U.S. military installation that is physically located in a foreign country is located in a State. For transfers sent from a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), whether the consumer is located in a State depends on the location of the consumer. If the provider does not know where the consumer is at the time the consumer requests the transfer from the consumer's prepaid account (other than a prepaid account that is a payroll card account or a government benefit account) the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer. For transfers from all other accounts belonging to a consumer, whether a consumer is located in a State depends on where the consumer's account is located. If the account is located in a State, the consumer will be located in a State for purposes of the definition of ''sender'' in § 1005.30(g), notwithstanding comment 3(a)–3. For these accounts, if they are located on a U.S. military installation that is physically located in a foreign country, then these accounts are located in a State. Where a transfer is requested electronically or by telephone and the transfer is not from an account, the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer.

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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).

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Appendix A—Model Disclosure Clauses and Forms

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2. *Use of forms.* The appendix contains model disclosure clauses for optional use by financial institutions and remittance transfer providers to facilitate compliance with the disclosure requirements of §§ 1005.5(b)(2) and (3), 1005.6(a), 1005.7, 1005.8(b), 1005.14(b)(1)(ii), 1005.15(c), 1005.15(e)(1) and (2), 1005.18(b)(2), (3), (6) and (7), 1005.18(d)(1) and (2), 1005.31, 1005.32 and 1005.36. The use of appropriate clauses in making disclosures will protect a financial institution and a remittance transfer provider from liability under sections 916 and 917 of the act provided the clauses accurately reflect the institution's EFT services and the provider's remittance transfer services, respectively.

3. *Altering the clauses.* Unless otherwise expressly addressed in the rule, the following applies. Financial institutions may use clauses of their own design in conjunction with the Bureau's model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (including the substitution of a trade name for the word ''card,'' deletion of inapplicable services, or substitution of lesser liability limits). Several of the model clauses include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.

* * * * *

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 13. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart A—General

■ 14. Section 1026.2 is amended by revising paragraphs (a)(15)(i), (a)(15)(ii)(A), and (a)(15)(ii)(B), and by adding paragraphs (a)(15)(ii)(C) and (a)(15)(iv) 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. The term credit card includes a hybrid prepaid-credit card as defined in § 1026.61.

(ii) * * *

(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; or

(C) An overdraft line of credit that is accessed by an account number, except if the account number is a hybrid prepaid-credit card that can access a covered separate credit feature as defined in § 1026.61.

* * * * *

(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 as defined in § 1026.61. The term *debit card* does not include a prepaid card as defined in § 1026.61.

* * * * *

■ 15. Section 1026.4 is amended by revising paragraphs (b)(2), (c)(3), and (c)(4), and by adding paragraph (b)(11) to read as follows:

§ 1026.4 Finance charge.

* * * * *

(b) * * *

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account (except a prepaid account as defined in § 1026.61) to the extent that the charge exceeds the charge for a similar account without a credit feature.

* * * * *

(11) With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61:

(i) Any fee or charge described in paragraphs (b)(1) through (10) of this section imposed on the covered separate credit feature, whether it is structured as a credit subaccount of the prepaid account or a separate credit account.

(ii) Any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

(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 paragraph does not apply to credit offered in connection with a prepaid account as defined in § 1026.61.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. This paragraph does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.

* * * * *

Subpart B—Open-End Credit

* * * * *

■ 16. Section 1026.6 is amended by adding paragraphs (b)(3)(iii)(D) and (E) to read as follows:

§ 1026.6 Account-opening disclosures.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(D) With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

(E) With regard to a non-covered separate credit feature accessible by a prepaid card as defined in § 1026.61, any fee or charge imposed on the asset feature of the prepaid account.

* * * * *

■ 17. 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, other than covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards as defined in § 1026.61; and

* * * * *

■ 18. Section 1026.12 is amended by revising paragraph (d) 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 (d) 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 (d) 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 a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, 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)(A) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer.

* * * * *

■ 19. 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, and 1005.18(e) as applicable, governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section if:

(1) Except with respect to a prepaid account as defined in § 1026.61, 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 regard to a covered separate credit feature and an asset feature of a prepaid account where both are accessible by a hybrid prepaid-credit card as defined in § 1026.61, an extension of credit that is incident to an electronic fund transfer occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction.

* * * * *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

* * * * *

■ 20. Section 1026.52 is amended by revising the heading for paragraph (a) to read as follows:

§ 1026.52 Limitations on fees.

(a) Limitations during first year after account opening—* * *

* * * * *

■ 21. Section 1026.60 is amended by revising paragraph (a)(5)(iv) and paragraph (b) introductory text 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 for a covered separate credit feature solely accessible by an account number that is a hybrid prepaid-credit card as defined in § 1026.61;

* * * * *

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), (e)(1), or (f) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), (7) through (12), and (15) of this section. With respect to a covered separate credit feature that is a charge card account accessible by a hybrid prepaid-credit card as defined in § 1026.61, a charge card issuer also shall disclose the applicable items in paragraphs (b)(3), (13), and (14) of this section.

* * * * *

■ 22. Section 1026.61 is added to read as follows:

§ 1026.61 Hybrid prepaid-credit cards.

(a) *Hybrid prepaid-credit card*—(1) *In general.* (i) Credit offered in connection with a prepaid account is subject to this section and this regulation as specified below.

(ii) For purposes of this regulation, except as provided in paragraph (a)(4) of this section, a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature as described in paragraph (a)(2)(i) of this section when it can access credit from that credit feature, or with respect to a credit feature structured as a negative balance on the asset feature of the prepaid account as described in paragraph (a)(3) of this section when it can access credit from that credit feature. A hybrid prepaid-credit card is a credit card for purposes of this regulation with respect to those credit features.

(iii) A prepaid card is not a hybrid prepaid-credit card or a credit card for purposes of this regulation if the only credit offered in connection with the prepaid account meets the conditions set forth in paragraph (a)(4) of this section.

(2) *Prepaid card can access credit from a covered separate credit feature*—(i) *Covered separate credit feature.* (A) A separate credit feature that can be accessed by a hybrid prepaid-credit card as described in this paragraph (a)(2)(i) is defined as a covered separate credit feature. A prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are both satisfied:

(*1*) The card can be used to draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers; and

(*2*) The separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

(B) A separate credit feature that meets the conditions set forth in paragraph (a)(2)(i)(A) of this section is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

(ii) *Non-covered separate credit feature.* A separate credit feature that does not meet the two conditions set forth in paragraph (a)(2)(i) of this section is defined as a non-covered separate credit feature. A prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature, even if the prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature as described in paragraph (a)(2)(i) of this section. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it may be subject to this regulation depending on its own terms and conditions, independent of the connection to the prepaid account.

(3) *Prepaid card can access credit extended through a negative balance on the asset feature of the prepaid account*—(i) *In general.* Except as provided in paragraph (a)(4) of this section, a prepaid card is a hybrid prepaid-credit card when it is a single device that can be used from time to time to access credit extended through a negative balance on the asset feature of the prepaid account.

(ii) *Negative asset balances.* Notwithstanding paragraph (a)(3)(i) of this section with regard to coverage under this regulation, structuring a hybrid prepaid-credit card to access credit through a negative balance on the asset feature violates paragraph (b) of this section. A prepaid account issuer can use a negative asset balance structure to extend credit on an asset feature of a prepaid account only if the prepaid card is not a hybrid prepaid-credit card as described in paragraph (a)(4) of this section.

(4) *Exception.* A prepaid card is not a hybrid prepaid-credit card and is not a credit card for purposes of this regulation where:

(i) The prepaid card cannot access credit from a covered separate credit feature as described in paragraph (a)(2)(i) of this section; and

(ii) The prepaid card only can access credit extended through a negative balance on the asset feature of the prepaid account where both paragraphs (a)(4)(ii)(A) and (B) of this section are satisfied.

(A) The prepaid account issuer has an established policy and practice of either declining to authorize any transaction for which it reasonably believes the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction, or declining to authorize any such transactions except in one or more of the following circumstances:

(*1*) The amount of the transaction will not cause the asset feature balance to become negative by more than $10 at the time of the authorization; or

(*2*) In cases where the prepaid account issuer has received an instruction or confirmation for an incoming electronic fund transfer originated from a separate asset account to load funds to the prepaid account or where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account but in either case the funds from the separate asset account have not yet settled, the amount of the transaction will not cause the asset feature balance to become negative at the time of the authorization by more than the incoming or requested load amount, as applicable.

(B) The following fees or charges are not imposed on the asset feature of the prepaid account:

(*1*) Any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. This paragraph does not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available;

(*2*) Any fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature, except that a prepaid account issuer may impose fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law; or

(*3*) Any fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

(C) A prepaid account issuer may still satisfy the exception in paragraph (a)(4) of this section even if it debits fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in paragraph (a)(4)(ii)(B) of this section.

(5) *Definitions.* For purposes of this section and other provisions in the regulation that relate to hybrid prepaid-credit cards:

(i) *Affiliate* means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

(ii) *Asset feature* means an asset account that is a prepaid account, or an asset subaccount of a prepaid account.

(iii) *Business partner* means a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with a prepaid account issuer or its affiliate.

(iv) *Credit feature* means a separate credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card, or a negative balance on an asset feature of a prepaid account through which credit can be extended in connection with a prepaid card.

(v) *Prepaid account* means a prepaid account as defined in Regulation E, 12 CFR 1005.2(b)(3).

(vi) *Prepaid account issuer* means a financial institution as defined in Regulation E, 12 CFR 1005.2(i), with respect to a prepaid account.

(vii) *Prepaid card* means any card, code, or other device that can be used to access a prepaid account.

(viii) *Separate credit feature* means a credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card that is separate from the asset feature of the prepaid account. This term does not include a negative balance on an asset feature of a prepaid account.

(b) *Structure of credit features accessible by hybrid prepaid-credit cards.* With respect to a credit feature that is accessible by a hybrid prepaid-credit card, a card issuer shall not structure the credit feature as a negative balance on the asset feature of a prepaid account. A card issuer shall structure the credit feature as a separate credit feature, either as a separate credit account, or as a credit subaccount of a prepaid account that is separate from the asset feature of the prepaid account. The separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under § 1026.61(a)(2)(i).

(c) *Timing requirement for credit card solicitation or application with respect to hybrid prepaid-credit cards.* (1) With respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered:

(i) Open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card;

(ii) Make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; or

(iii) Allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

(2) For purposes of paragraph (c) of this section, the term *solicitation* has the meaning set forth in § 1026.60(a)(1).

* * * * *

■ 23. In Supplement I to part 1026—Official Interpretations:

■ 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. Paragraph 2.i.B is revised.

■ B. Paragraph 2.i.F is added.

■ C. Paragraph 2.ii.C is revised.

■ D. Paragraph 2.ii.D is added.

■ E. Paragraphs 3 and 4 are revised.

■ iv. In subsection *Paragraph 2(a)(17)(i),* paragraph 8 is added.

■ v. In subsection *Paragraph 2(a)(17)(iii),* paragraph 2 is added.

■ vi. 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,* paragraph 4 introductory text is revised.

■ ii. In subsection *Paragraph 4(b)(2),* paragraph 1 is revised and paragraph 2 is added.

■ iii. Subsection *Paragraph 4(b)(11)* is added.

■ iv. In subsection *Paragraph 4(c)(3),* paragraph 1 is revised and paragraph 2 is added.

■ iv. In subsection *Paragraph 4(c)(4),* paragraph 1 is revised and paragraph 3 is added.

■ c. Under *Section 1026.5—General Disclosure Requirements:*

■ i. In subsection *5(b)(2)(ii) Timing Requirements,* paragraph 4.i is revised.

■ d. Under *Section 1026.6—Account-Opening Disclosures:*
■ i. In subsection *6(b)(2) Required Disclosures for Account-Opening Table for Open-End (Not Home-Secured) Plans,* paragraphs 1 and 2 are added.
■ ii. Subheading *Paragraph 6(b)(3)(iii)* and subsections *Paragraph 6(b)(3)(iii)(D)* and *Paragraph 6(b)(3)(iii)(E)* are added.
■ e. Under *Section 1026.7—Periodic Statement:*
■ i. In subsection *7(b)(13) Format Requirements,* paragraph 1 is revised.
■ f. Under *Section 1026.8—Identifying Transactions on Periodic Statements:*
■ i. In subsection *8(a) Sale Credit,* paragraph 1 introductory text is revised and paragraph 9 is added.
■ ii. In subsection *8(b) Nonsale credit,* the subheading is revised, paragraph 1.ii is revised, paragraphs 1.v and 1.vi are added, and 2 introductory text is revised.
■ g. Under *Section 1026.10—Payments:*
■ i. In subsection *10(a) General Rule.,* the subheading is revised, and paragraph 2.ii is revised.
■ ii. In subsection *10(b) Specific Requirements for Payments,* paragraph 1 is revised.
■ h. Under *Section 1026.12—Special Credit Card Provisions:*
■ i. In subsection *Paragraph 12(a)(1),* paragraphs 2 and 7 are revised.
■ ii. In subsection *Paragraph 12(a)(2),* paragraph 6.i is revised, paragraph 6.ii is redesignated as 6.iii, and new paragraph 6.ii is added.
■ iii. In subsection *12(c) Right of Cardholder to Assert Claims or Defenses Against Card Issuer,* paragraph 5 is added.
■ iv. In subsection *12(c)(1) General Rule,* paragraphs 1 introductory text and 1.ii are revised.
■ v. In subsection *12(d) Offsets by Card Issuer Prohibited,* paragraph 1 is added.
■ vi. In subsection *Paragraph 12(d)(1),* paragraph 2 is revised.
■ vii. In subsection *Paragraph 12(d)(2),* paragraph 1.i is revised, paragraph 1.ii is redesignated as 1.iv, and new paragraph 1.ii and paragraph 1.iii are added.
■ viii. In subsection *Paragraph 12(d)(3),* paragraph 1.iii is revised and paragraphs 2.iii and 3 are added.
■ i. Under *Section 1026.13—Billing Error Resolution:*
■ i. In subsection *13(i) Relation to Electronic Fund Transfer Act and Regulation E,* paragraphs 2, 3 introductory text, 3.i, and 3.iv are revised and paragraphs 4 and 5 is added.
■ j. Under *Section 1026.52—Limitations on Fees:*
■ i. In subsection *52(a)(1) General rule,* paragraph 1 introductory text is revised and paragraphs 1.iii and 1.iv are added.
■ ii. In subsection *52(a)(2) Fees Not Subject to Limitations,* paragraph 1 introductory text is revised, paragraphs 2 and 3 are redesignated as paragraphs 4 and 5, and new paragraphs 2 and 3 are added.
■ iii. In subsection *52(b) Limitations on Penalty Fees,* paragraphs 3 and 4 are added.
■ iv. In subsection *52(b)(2)(i) Fees That Exceed Dollar Amount Associated with Violation,* paragraph 7 is added.
■ k. Under *Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges:*
■ i. In subsection *55(a) General Rule,* paragraphs 3 and 4 are added.
■ l. Under *Section 1026.57—Reporting and Marketing Rules for College Student Open-End Credit:*
■ i. In subsection *57(a)(1) College student credit card,* paragraph 1 is revised.
■ ii. In subsection *57(a)(5) College credit card agreement,* paragraph 1 is revised.
■ iii. In subsection *57(b) Public disclosure of agreements,* paragraph 3 is added.
■ iv. In subsection *57(c) Prohibited inducements,* paragraph 7 is added.
■ m. Under *Section 1026.60—Credit and Charge Card Applications and Solicitations:*
■ i. Paragraph 1 is revised.
■ ii. In subsection *60(b) Required Disclosures,* paragraphs 3 and 4 are added.
■ iii. In subsection *60(b)(4) Transaction Charges,* paragraph 3 is added.
■ iv. In subsection *60(b)(8) Cash Advance Fee,* paragraph 4 is added.
■ n. *Section 1026.61—Hybrid Prepaid-Credit Cards* is added.

The revisions, additions, and removals read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart A—General

* * * * *

Section 1026.2 Definitions and Rules of Construction

* * * * *

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 covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 where that credit feature is offered by an affiliate or business partner of the prepaid account issuer as those terms are defined in § 1026.61, the affiliate or business partner offering the credit feature is an agent of the prepaid account issuer and thus, is itself a card issuer with respect to the hybrid prepaid-credit card.

2. *Prepaid cards that are not hybrid prepaid-credit cards.* See § 1026.61(a) and comments 61(a)(2)–5.iii and 61(a)(4)–1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

* * * * *

2(a)(14) Credit

* * * * *

3. *Transactions on the asset features of prepaid accounts when there are insufficient or unavailable funds.* Credit includes authorization of a transaction on the asset feature of a prepaid account as defined in § 1026.61 where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction. It also includes settlement of a transaction on the asset feature of a prepaid account where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled to cover the amount of the transaction. This includes a transaction where the consumer has sufficient or available funds in the asset feature of a prepaid account to cover the amount of the transaction at the time the transaction is authorized but insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction amount at the time the transaction is settled. See § 1026.61 and related commentary on the applicability of this regulation to credit that is extended in connection with a prepaid account.

Paragraph 2(a)(15)

* * * * *

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 that is a hybrid prepaid-credit card as defined in § 1026.61.

ii. * * *

C. 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 or as provided in § 1026.61 with respect to a hybrid prepaid-credit card. 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).

D. A prepaid card that is not a hybrid prepaid-credit card as defined in § 1026.61.

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 §§ 1026.6(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), 1026.60, and appendices G–10 through G–13.

ii. A hybrid prepaid-credit card as defined in § 1026.61 is a charge card with respect to a covered separate credit feature if no periodic rate is used to compute the finance charge in connection with the covered separate credit feature. Unlike other charge card accounts, the requirements in § 1026.7(b)(11) apply to a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card when that covered separate credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, under § 1026.5(b)(2)(ii)(A), with respect to a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer of a hybrid prepaid-credit card that meets the definition of a charge card because no periodic rate is used to compute a finance charge in connection with the covered separate credit feature must adopt reasonable procedures for the covered separate credit feature 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) through (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 for an overdraft line of credit that is accessed by an account number does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card (including a hybrid prepaid-credit card that is solely an account number) as defined in § 1026.61.

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2(a)(17) Creditor

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Paragraph 2(a)(17)(i)

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8. *Prepaid cards that are not hybrid prepaid-credit cards.* See § 1026.61(a) and comments 61(a)(2)–5.iii and 61(a)(4)–1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

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Paragraph 2(a)(17)(iii)

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2. *Prepaid cards that are not hybrid prepaid-credit cards.* See § 1026.61(a) and comments 61(a)(2)–5.iii and 61(a)(4)–1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

* * * * *

2(a)(20) Open-End Credit

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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 a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, 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 extends credit from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner where the prepaid card can be used from time to time to draw, transfer, or authorize the draw or transfer of credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, and the consumer is obligated contractually to repay those credit transactions. Such a program constitutes a plan notwithstanding that, for example, the creditor has not agreed in writing to extend credit for those transactions, the creditor retains discretion not to extend credit for those transactions, or the creditor does not extend credit for those transactions once the consumer has exceeded a certain amount of credit. See § 1026.61(a) and related commentary for guidance on the applicability of this regulation to credit accessible by hybrid prepaid-credit cards.

iii. 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.

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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 regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, any service, transaction, activity, or carrying charges imposed on the covered separate credit feature, and any such charges imposed on the asset feature of the prepaid account to the extent that the amount of the charge exceeds comparable charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card, generally is a finance charge. *See* § 1026.4(a) and (b)(11). Such charges include a periodic fee to participate in the covered separate credit feature, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. With respect to credit from a covered separate credit feature accessible by a hybrid prepaid-credit card, any service, transaction, activity, or carrying charges that are finance charges under § 1026.4 constitute finance charges imposed from time to time on an outstanding unpaid balance as described in § 1026.2(a)(20) if there is no specific amount financed for the credit feature 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. *Treatment of transaction fees on credit card plans.* Except with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, which are addressed in more detail in §§ 1026.4(b)(11) and 1026.61, 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:

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4(b) Examples of Finance Charges

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Paragraph 4(b)(2)

1. *Checking or transaction account charges.* A charge imposed in connection with a credit feature on a checking or transaction account (other than a prepaid account as defined in § 1026.61) 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 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). To illustrate:

i. 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).)

ii. 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.

2. *Prepaid accounts.* Fee or charges related to credit offered in connection with prepaid accounts as defined in § 1026.61 are discussed in §§ 1026.4(b)(11) and 1026.61 and related commentary.

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Paragraph 4(b)(11)

1. *Credit in connection with a prepaid card.* Section 1026.61 governs credit offered in connection with a prepaid card.

i. A separate credit feature that meets the conditions of § 1026.61(a)(2)(i) is defined as a covered separate credit feature accessible by a hybrid prepaid-credit card. *See* § 1026.61(a)(2)(i) and comment 61(a)(2)–4. In this case, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account. The rules for classification of fees or charges as finance charges in connection with this account structure are specified in § 1026.4(b)(11) and related commentary.

ii. If a prepaid card can access a non-covered separate credit feature as described in § 1026.61(a)(2)(ii), the card is not a hybrid prepaid-credit card with respect to that credit feature. In that case:

A. Section 1026.4(b)(11) and related commentary do not apply to fees or charges imposed on the non-covered separate credit feature; instead, the general rules set forth in § 1026.4 determine whether these fees or charges are finance charges; and

B. Fees or charges on the asset feature of the prepaid account are not finance charges under § 1026.4 with respect to the non-covered separate credit feature. See comment 61(a)(2)–5.iii for guidance on the applicability of this regulation in connection with non-covered credit features accessible by prepaid cards.

iii. If the prepaid card is not a hybrid prepaid-credit card because the only credit extended through a negative balance on the asset feature of the prepaid account is pursuant to § 1026.61(a)(4), fees charged on the asset feature of the prepaid account in accordance with § 1026.61(a)(4)(ii)(B) are not finance charges.

Paragraph 4(b)(11)(i)

1. *Transaction fees imposed on the covered separate credit feature.* Consistent with comment 4(a)–4, any transaction charge imposed on a cardholder by a card issuer on a covered separate credit feature accessible by a hybrid prepaid-credit card is a finance charge. Transaction charges that are imposed on the asset feature of a prepaid account are subject to § 1026.4(b)(11)(ii) and related commentary, instead of § 1026.4(b)(11)(i).

Paragraph 4(b)(11)(ii)

1. *Fees or charges imposed on the asset feature of a prepaid account.* i. Under § 1026.4(b)(11)(ii), with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined § 1026.61, any fee or charge imposed on the asset feature of the prepaid account is a finance charge to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. This comment provides guidance with respect to comparable fees under § 1026.4(b)(11)(ii) for the two types of credit extensions on a covered separate credit feature. *See* § 1026.61(a)(2)(i)(B) and comment 61(a)(2)–4.ii. Comment 4(b)(11)(ii)–1.ii provides guidance for credit extensions where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. Comment 4(b)(11)(ii)–1.iii provides guidance for credit extensions where a consumer draws or transfers credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

ii. Where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, any per transaction fees imposed on the asset feature of prepaid accounts, including load and transfer fees, for such credit from the credit feature are comparable only to per transaction fees for each transaction to access funds in the asset feature of a prepaid account that are imposed on prepaid accounts in the same prepaid account program that does not have such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of § 1026.4(b)(11)(ii). To illustrate:

A. Assume a prepaid account issuer charges $0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of the prepaid accounts. Also, assume that the prepaid account issuer charges $0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, the $0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge.

B. Assume same facts as in paragraph A above, except that assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. In this case, the additional $0.75 is a finance charge.

C. Assume a prepaid account issuer charges $0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of the prepaid accounts. Assume also that the prepaid account issuer charges both a $0.50 per transaction fee and a $1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.,* a combined fee of $1.75 per transaction) must be compared to the $0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. Accordingly, the $1.25 excess is a finance charge.

D. Assume same facts as in paragraph C above, except that assume the prepaid account issuer also charges a load fee of $1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature, in addition to charging a $0.50 per transaction fee. The $1.25 excess in paragraph C is still a finance charge because load or transfer fees that are charged on the asset feature of prepaid account for credit from the covered separate credit feature are compared only to per transaction fees

imposed for accessing funds in the asset feature of the prepaid account for prepaid accounts without such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of § 1026.4(b)(11)(ii).

iii. A consumer may choose in a particular circumstance to draw or transfer credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. *See* § 1026.61(a)(2)(i)(B) and comment 61(a)(2)–4.ii. In these situations, load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction are compared only with fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of § 1026.4(b)(11)(ii). To illustrate:

A. Assume a prepaid account issuer charges a $1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without such a credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a non-covered separate credit feature are not comparable for purposes of § 1026.4(b)(11)(ii).

B. Assume that a prepaid account issuer charges a $1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account are not comparable for purposes of § 1026.4(b)(11)(ii).

2. *Relation to Regulation E.* See Regulation E, 12 CFR 1005.18(g), which only permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. Under that provision, a financial institution cannot charge a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts without such a credit feature in the same prepaid account program.

4(c) Charges Excluded From the Finance Charge

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Paragraph 4(c)(3)

1. *Assessing interest on an overdraft balance.* Except with respect to credit offered in connection with a prepaid account as defined in § 1026.61, 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.

2. *Credit accessed in connection with a prepaid account.* See comment 4(b)(11)–1 for guidance on when fees imposed with regard to credit accessed in connection with a prepaid account as defined in § 1026.61 are finance charges.

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 covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61, 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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3. *Credit accessed in connection with by a prepaid account.* See comment 4(b)(11)–1 for guidance on when fees imposed with regard to credit accessed in connection with a prepaid account as defined in § 1026.61 are finance charges.

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Subpart B—Open-End Credit

Section 1026.5—General Disclosure Requirements

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5(b) Time of Disclosures

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5(b)(2) Periodic Statements

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5(b)(2)(ii) Timing Requirements

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4. * * *

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 covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards as defined in § 1026.61, § 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 1026.6—Account-Opening Disclosures

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6(b) Rules Affecting Open-End (Not Home-Secured) Plans

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6(b)(2) Required Disclosures for Account-Opening Table for Open-End (Not Home-Secured) Plans

1. *Fees imposed on the asset feature of a prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, a creditor is required to

disclose under § 1026.6(b)(2) any fees or charges imposed on the asset feature that are charges imposed as part of the plan under § 1026.6(b)(3) to the extent those fees fall within the categories of fees or charges required to be disclosed under § 1026.6(b)(2). For example, assume that a creditor imposes a $1.25 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, and a $0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. In this case, the $0.75 excess is a charge imposed as part of the plan under § 1026.6(b)(3) and must be disclosed under § 1026.6(b)(2)(iv).

2. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* A creditor is not required to disclose under § 1026.6(b)(2) any fee or charge imposed on the asset feature of a prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3).

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6(b)(3) Disclosure of Charges Imposed as Part of Open-End (Not Home-Secured) Plans

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Paragraph 6(b)(3)(iii)

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Paragraph 6(b)(3)(iii)(D)

1. *Fees imposed on the asset feature of the prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card.* Under § 1026.6(b)(3)(iii)(D), with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, a fee or charge imposed on the asset feature of the prepaid account is not a charge imposed as part of the plan under § 1026.6(b)(3) with respect to a covered separate credit feature to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature assessed by a hybrid prepaid-credit card. To illustrate:

i. Assume a prepaid account issuer charges a $0.50 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card and a $0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. The $0.50 fees are comparable fees and the $0.50 fee for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card is not a charge imposed as part of the plan. However, if in this example, the prepaid account issuer imposes a $1.25 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, the $0.75 excess is a charge imposed as part of the plan. This $0.75 excess also is a finance charge under § 1026.4(b)(11)(ii).

ii. See comment 4(b)(11)(ii)–1 for additional illustrations of when a prepaid account issuer is charging comparable per transaction fees or load or transfer fees on the prepaid account.

Paragraph 6(b)(3)(iii)(E)

1. *Fees imposed on the asset feature of a prepaid account in connection with a non-covered separate credit feature.* With regard to a non-covered separate credit feature accessible by a prepaid card as defined in § 1026.61, under § 1026.6(b)(3)(iii)(E), none of the fees or charges imposed on the asset balance of the prepaid account are charges imposed as part of the plan under § 1026.6(b)(3) with respect to the non-covered separate credit feature. In addition, none of these fees or charges imposed on the asset feature of the prepaid account are finance charges with respect to the non-covered separate credit feature as discussed in comment 4(b)(11)–1.ii.B.

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Section 1026.7—Periodic Statement

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7(b) Rules Affecting Open-End (Not Home-Secured) Plans

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7(b)(13) Format Requirements

1. *Combined asset account and credit account statements.* Some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. For purposes of providing disclosures on the front of the first page of the periodic statement pursuant to § 1026.7(b)(13), the first page of such a combined statement shall be the page on which credit transactions first appear. This guidance also applies to financial institutions that provide information about prepaid accounts and account activity in connection with covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61 on one periodic statement.

Section 1026.8 Identifying Transactions on Periodic Statements

8(a) Sale Credit

1. *Sale credit.* 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 (see comment 8(b)–1 if access is by means of a check) to obtain goods or services from a merchant, whether or not the merchant is the card issuer or creditor. See comment 8(a)–9 for guidance on when credit accessed by a hybrid prepaid-credit card from a covered separate credit feature is ''sale credit' or ''nonsale credit.'' ''Sale credit'' includes:

* * * * *

9. *Covered separate credit feature accessible by hybrid prepaid-credit card.* i. A transaction will be treated as a ''sale credit'' under § 1026.8(a) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant with credit from a covered separate credit feature and the credit is drawn directly from the covered separate credit feature without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature, and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. The $15 credit transaction will be treated as ''sale credit'' under § 1026.8(a).

ii. On the other hand, a transaction will be treated as ''nonsale credit'' for purposes of § 1026.8(b) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the $15 will be transferred from the credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account. In this case, the $15 credit transaction is treated as ''nonsale credit'' under § 1026.8(b). *See* comment 8(b)–1.vi below.

iii. If a transaction is ''sale credit'' as described above in comment 8(a)–9.i, the following applies:

A. If a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds in the asset feature of the prepaid account, and partially paid with credit from a covered separate credit feature, the amount to be disclosed under § 1026.8(a) is the amount of the credit extension, not the total amount of the purchase transaction.

B. For a transaction at point of sale where credit from a covered separate credit feature is accessed by a hybrid prepaid-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 transaction 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. * * *

ii. An advance on a credit plan that is accessed by overdrafts on an asset account

other than a prepaid account as defined in § 1026.61.

* * * * *

v. An advance at an ATM on a covered separate credit feature accessed by a hybrid prepaid-credit card as defined in § 1026.61. If a hybrid prepaid-credit card is used to obtain an advance at an ATM and the transaction is partially paid with funds from the asset feature of the prepaid account, and partially paid with a credit extension from the covered separate credit feature, the amount to be disclosed under § 1026.8(b) is the amount of the credit extension, not the total amount of the ATM transaction.

vi. A transaction where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase, as described in comment 8(a)–9.ii. In this scenario, the amount to be disclosed under § 1026.8(b) is the amount of the credit extension, not the total amount of the purchase transaction.

2. *Amount—overdraft credit plans.* If credit is extended under an overdraft credit plan tied to an asset account other than a prepaid account as defined in § 1026.61 or by means of a debit card tied to an overdraft 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 payments made periodically from a deposit account, including a prepaid account, held by a card issuer to pay credit card debt in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 held by the card issuer. In a payroll deduction plan in which funds are deposited to a prepaid account held by the card issuer, and from which payments are made on a monthly basis to a covered separate credit feature accessible by a hybrid prepaid-credit card that is held by the card issuer, 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 covered separate credit feature that would make the card into a hybrid prepaid-credit card as defined in § 1026.61 with respect to the covered separate credit feature.

* * * * *

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 covered separate credit feature that would make the prepaid card into a hybrid prepaid-credit card as defined in § 1026.61 at the time the card is issued and only opens a covered separate credit feature, or provides an application or solicitation to open a covered separate credit feature, or allows an existing credit feature to become a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 in compliance with § 1026.61(c). A covered separate credit feature may be added to a previously issued prepaid card only upon the consumer's application or specific request and only in compliance with § 1026.61(c). An issuer does not connect a prepaid card to a covered separate credit feature that would make the card into a credit card simply by providing the disclosures required by Regulation E, 12 CFR 1005.18(b)(2)(x), (b)(4)(iv), and (vii), with the prepaid card. See § 1026.12(a)(2) and related commentary for when a hybrid prepaid-credit card as defined in § 1026.61 may be issued as a replacement or substitution for another hybrid prepaid-credit card. See also Regulation E, 12 CFR 1005.5 and 1005.18(a), and related commentary, governing issuance of access devices under Regulation E.

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Paragraph 12(a)(2)

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6. * * *

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 hybrid prepaid-credit card as defined in § 1026.61.

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12(c) Right of Cardholder To Assert Claims or Defenses Against Card Issuer

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5. *Prepaid cards.* i. Section 1026.12(c) applies to property or services purchased with the hybrid prepaid-credit card that accesses a covered separate credit feature as defined in § 1026.61. The following examples illustrate when a hybrid prepaid-credit card is used to purchase property or services:

A. A consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is drawn directly from a covered separate credit feature accessed by the hybrid prepaid-credit card without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. In this case, the consumer is using credit accessed by the hybrid prepaid-credit card to purchase property or services where credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card to cover the amount of the purchase.

B. A consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a

covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the $15 will be transferred from a covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account. In this case, the consumer is using credit accessed by the hybrid prepaid-credit card to purchase property or services because credit is transferred to the asset feature of the prepaid account to cover the amount of a purchase made with the card. This is true even though the $15 credit transaction is treated as ''nonsale credit'' under § 1026.8(b). *See* comments 8(a)–9.ii and 8(b)–1.vi.

ii. For a transaction at point of sale where a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds from the asset feature of the prepaid account, and partially paid with credit from the covered separate credit feature, 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 a hybrid prepaid-credit card to access a covered separate credit feature as defined in § 1026.61. This could include mail, the Internet or telephone orders, if the purchase is charged to the credit card account. But it would exclude:

* * * * *

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 other than a covered separate credit feature accessible by a hybrid prepaid-credit card.)

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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 as defined in § 1026.61. 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 as defined in § 1026.61 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. * * *

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. With respect to a credit card account other than a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, indicia of the consumer's awareness and intent to grant a security interest in a deposit account 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. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, in order for a consumer to show awareness and intent to grant a security interest in a deposit account, including a prepaid account, 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 deposit 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 deposit account number and to a specific amount of funds in the deposit 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.

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Paragraph 12(d)(3)

1. * * *

iii. If the cardholder has the option to accept or reject the automatic debit feature (such option may be required under section 913 of the Electronic Fund Transfer Act and Regulation E, 12 CFR 1005.10(e)), the fact that the option exists should be clearly indicated.

2. * * *

iii. Automatically deducting from the consumer's deposit account any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

3. *Prepaid accounts.* With respect to covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61, 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 (including the 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 more frequently than once per calendar month, pursuant to such a plan. To illustrate, with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, 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 (including the 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 or expected to be made to the deposit account.

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Section 1026.13—Billing Error Resolution

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13(i) Relation to Electronic Fund Transfer Act and Regulation E

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2. *Incidental credit under an agreement with respect to an account other than a prepaid account.* Except with respect to a prepaid account as defined in § 1026.61, for credit extended incident to an electronic fund transfer under an agreement between the consumer and the financial institution, § 1026.13(i)(1) provides that certain error resolution procedures in both this part and Regulation E apply. Except with respect to a prepaid account, 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.

* * * * *

iv. The provisions of § 1026.13(d) and (g) apply only to the credit portion of the transaction.

4. *Credit under a covered separate credit feature accessible by a hybrid prepaid-credit card.* For transactions involving a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, 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 a covered separate credit feature and does not access funds from the asset feature of the prepaid account, the error resolution requirements of Regulation Z apply. To illustrate, assume that there is $0 in the asset feature of the prepaid account, and the consumer makes a $25 transaction with the card. The error resolution requirements of Regulation Z apply to the transaction. This is true regardless of whether the $25 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether the $25 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account to cover the amount of the transaction.

ii. If the transaction accesses funds from the asset feature of a prepaid account only (with no credit extended under the credit feature), the provisions of Regulation E apply.

iii. If the transaction accesses funds from the asset feature of a prepaid account but also involves an extension of credit under the covered separate credit feature, a creditor must comply with the requirements of Regulation E, 12 CFR 1005.11, and 1005.18(e) as applicable, governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h). To illustrate, assume that there is $10 in the asset feature of the prepaid account, and the consumer makes a $25 transaction with the card. The error resolution requirements of Regulations E and Z apply as described above to the transaction. This is true regardless of whether $10 is debited from the asset feature and $15 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether $15 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account and a $25 transaction is debited from the asset feature to cover the amount of the transaction. When this paragraph applies:

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 Regulation E, 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. *Prepaid cards that are not hybrid prepaid-credit cards.* Regulation E, 12 CFR 1005.12(a)(1)(iv)(C) and (D), and (a)(2)(iii) provide guidance on whether error resolution procedures in Regulations E or Z apply to transactions involving credit features that are accessed by prepaid cards that are not hybrid prepaid-credit cards as defined in § 1026.61. Regulation E 12 CFR 1005.12(a)(1)(iv)(C) provides that with respect to transactions that involve credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in § 1026.61(a)(4), these transactions are governed solely by error resolution procedures in Regulation E, and Regulation Z does not apply. Regulation E 12 CFR 1005.12(a)(1)(iv)(D) and (a)(2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in § 1026.61, a financial institution must comply with Regulation E's error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable.

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Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

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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 as defined in § 1026.61, 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 covered separate credit feature accessible by a hybrid prepaid-credit card as defined by § 1026.61 that is a credit card account under an open-end (not home-secured) consumer credit plan on March 1 of year one. Assume that, under the terms of the covered separate credit feature accessible by the hybrid prepaid-credit 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 an additional credit feature with the card issuer to fund the payment of additional non-exempt fees during the first year after the covered separate credit feature 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 covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 that is a credit card account under an open-end (not home-secured) consumer credit plan on March 1 of year one. Assume that, under the terms of the covered separate credit feature accessible by the hybrid prepaid-credit 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 5 percent of any 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 25th 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, because the total amount of non-exempt fees reached the 25 percent limit with the $5 cash advance fee on April 1 (the $15 late fee on April 26 is exempt pursuant to § 1026.52(a)(2)(i)). 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

1. *Covered fees.* Except as provided in § 1026.52(a)(2) and except as provided in comments 52(a)(2)–2 and–3, § 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. For example, § 1026.52(a) applies to:

* * * * *

2. *Fees in connection with a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(a) applies to the following fees:

i. Except as provided in § 1026.52(a)(2), any fee or charge imposed on the covered separate credit feature, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay in connection with the credit feature, and

ii. Except as provided in § 1026.52(a)(2), any fee or charge imposed on the asset feature of the prepaid account, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay where that fee or charge is a charge imposed as part of the plan under § 1026.6(b)(3).

3. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.52(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

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52(b) Limitations on Penalty Fees

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3. *Fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b) applies to any fee for violating the terms or other requirements of the credit feature, regardless of whether those fees are imposed on the credit feature or on the asset feature of the prepaid account. For example, assume that a late fee will be imposed by the card issuer if the covered separate credit feature becomes delinquent or if a payment is not received by a particular date. This fee is subject to § 1026.52(b) regardless of whether the fee is imposed on the asset feature of the prepaid account or on the separate credit feature.

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

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52(b)(2) Prohibited 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 1026.52(b)(2)(i)(B)(*1*) states that card issuers must not impose a fee when there is no dollar amount associated with the violation, such as for transactions that the card issuer declines to authorize. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b)(2)(i)(B)(*1*) prohibits a card issuer from imposing declined transaction fees in connection with the credit feature, regardless of whether the declined transaction fee is imposed on the credit feature or on the asset feature of the prepaid account. For example, if the prepaid card attempts to access credit from the covered separate credit feature accessible by the hybrid prepaid-credit card and the transaction is declined, § 1026.52(a)(2)(i)(B)(*1*) prohibits the card issuer from imposing a declined transaction fee, regardless of whether the fee is imposed on the credit feature or on the asset feature of the prepaid account. Fees imposed for declining a transaction that would have only accessed the asset feature of the prepaid account and would not have accessed the covered separate credit feature accessible by the hybrid prepaid-credit are not covered by § 1026.52(b)(2)(i)(B)(*1*).

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Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges

55(a) General Rule

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3. *Fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (iii), or (xii) on a credit card account unless specifically permitted by one of the exceptions in § 1026.55(b). This is true regardless of whether these fees or annual percentage rates are imposed on the asset feature of the prepaid account or on the credit feature.

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.55(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

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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 hybrid prepaid-credit card as defined by § 1026.61 that is issued to any college student where the card can access a covered separate credit feature that is 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 as defined in § 1026.61 that is issued to any college student where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined by § 1026.61 may be added in the future to the prepaid account.

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 a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined by § 1026.61 to prepaid accounts previously issued to full-time or part-time students. 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 as defined in § 1026.61 to full-time or part-time students; and (2) a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined by § 1026.61 may be added in the future to the prepaid account.

57(b) Public Disclosure of Agreements

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3. *Credit card accounts in connection with prepaid accounts.* 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 a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 to prepaid accounts previously issued to full-time or part-time students; or (2) new prepaid accounts as defined in § 1026.61 where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 may be added in the future to the prepaid account. 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 (1) the application for or opening of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 that is being added to a prepaid account previously issued to a full-time or part-time student as well as (2) the application for or opening of a prepaid account as defined in § 1026.61 where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 may be added in the future to the prepaid account.

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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 § 1026.61(c) for restrictions on when credit or charge card accounts can be added to previously issued prepaid accounts.)

* * * * *

60(b) Required Disclosures

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3. *Fees imposed on the asset feature of a prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, a card issuer is required to disclose under § 1026.60(b) any fees or charges imposed on the asset feature of the prepaid account that are charges imposed as part of the plan under § 1026.6(b)(3) to the extent those fees or charges fall within the categories of fees or charges required to be disclosed under § 1026.60(b). For example, assume that a card issuer imposes a $1.25 per transaction fee on the asset feature of a prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, and the card issuer charges $0.50 per transaction for purchases that access funds in the asset feature of the prepaid account in the same program without such a credit feature. In this case, the $0.75 excess is a charge imposed as part of the plan under § 1026.6(b)(3) and must be disclosed under § 1026.60(b)(4).

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* A card issuer is not required under § 1026.60(b) to disclose any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

* * * * *

60(b)(4) Transaction Charges

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3. *Prepaid cards.* i. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by § 1026.61, 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) to make a purchase where this fee is imposed as part of the plan as described in § 1026.6(b)(3), that fee is a transaction charge described in § 1026.60(b)(4). *See* comments 60(b)–3 and –4. This is so whether the fee is a per transaction fee to make a purchase, or a flat fee for each day (or other period) the consumer has an outstanding balance of purchase transactions.

ii. A fee for a transaction will be treated as a fee to make a purchase under § 1026.60(b)(4) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is drawn directly from a covered separate credit feature accessed by the hybrid prepaid-credit card without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. A per transaction fee imposed for the $15 credit transaction must be disclosed under § 1026.60(b)(4).

iii. On the other hand, a fee for a transaction will be treated as a cash advance fee under § 1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant

and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the $15 will be transferred from the covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account. In this case, a per transaction fee for the $15 credit transaction must be disclosed under § 1026.60(b)(8).

* * * * *

60(b)(8) Cash Advance Fee

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4. *Prepaid cards.* i. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by § 1026.61, 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, such as a cash withdrawal at an ATM, where the fee is imposed as part of the plan as described in § 1026.6(b)(3), that fee is a cash advance fee. *See* comments 60(b)–3 and –4. In addition, a fee for a transaction will be treated as a cash advance fee under § 1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. *See* comment 60(b)(4)–3.iii.

ii. 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. 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. Assume that all the fees in the examples below are charged on the covered separate credit feature.

A. A card issuer assesses a $15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account as described in comment 60(b)(4)–3.ii. The card issuer assesses a $25 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit 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.

B. A card issuer assesses a $15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account as discussed in comment 60(b)(4)–3.ii. The card issuer assesses a $15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit 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.

C. A card issuer assesses a $15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit 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).''

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Section 1026.61 Hybrid Prepaid-Credit Cards

61(a) Hybrid Prepaid-Credit Card

1. *Scope of § 1026.61.* Section 1026.61 sets forth the definition of hybrid prepaid-credit card, and several requirements that only apply to covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61(a)(2)(i). Hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards are also subject to other rules in this regulation, and some of those rules and related commentary contain specific guidance related to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards. For example, as discussed in §§ 1026.2(a)(15)(i) and 1026.61(a), a hybrid prepaid-credit card is a credit card for purposes of this regulation with respect to a covered separate credit feature. A covered separate credit feature accessible by a hybrid prepaid-credit card also will be a credit card account under an open-end (not home-secured) consumer credit plan as defined in § 1026.2(a)(15)(ii) if the covered separate credit feature is an open-end credit plan. Thus, the provisions in this regulation that apply to credit cards and credit card accounts under an open-end (not home-secured) consumer credit plan generally will apply to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards as applicable (*see generally* subparts B and G). Some of those rules and related commentary contain specific guidance with respect to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards. *See, e.g.,* §§ 1026.2(a)(15)(i) and (ii), 1026.4(b)(11), (c)(3) and (4), 1026.6(b)(3)(iii)(D) and (E), 1026.7(b)(11)(ii)(A), 1026.12(d)(3)(ii), 1026.13(i)(2), 1026.60(a)(5)(iv) and (b), and related commentary to these and other rules in the regulation.

61(a)(1) In General

1. *Credit.* Under § 1026.61(a)(1), except as provided in § 1026.61(a)(4), a prepaid card is a hybrid prepaid-credit card if the prepaid card can access credit from a covered separate credit feature as described in § 1026.61(a)(2)(i) or if it can access credit extended through a negative balance on the asset feature of the prepaid account as described in § 1026.61(a)(3). When § 1026.61 references credit that can be accessed from a separate credit feature or credit that can be extended through a negative balance on the asset feature, it means credit that can be accessed or can be extended even if, for example:

i. The person that can extend the credit does not agree in writing to extend the credit;

ii. The person retains discretion not to extend the credit, or

iii. The person does not extend the credit once the consumer has exceeded a certain amount of credit.

2. *Prepaid card that is solely an account number.* A prepaid card that is solely an account number is a hybrid prepaid-credit card if it meets the conditions set forth in § 1026.61(a).

3. *Usable from time to time.* In order for a prepaid card to be a hybrid prepaid-credit card under § 1026.61(a), the prepaid card must be capable of being used from time to time to access credit as described in § 1026.61(a). 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 hybrid prepaid-credit cards. With respect to a preauthorized check that is issued on a prepaid account for which credit is extended through a negative balance on the asset feature of the prepaid account, or credit is drawn, transferred or authorized to be drawn or transferred from a separate credit feature, the credit is obtained using the prepaid account number and not the check at the time of preauthorization using the prepaid account number. The prepaid account number is a hybrid prepaid-credit card if the account number meets the conditions set forth in § 1026.61(a). *See* comment 61(a)(1)–2.

4. *Prepaid account that is a digital wallet.* i. A digital wallet that is capable of being loaded with funds is a prepaid account under Regulation E, 12 CFR 1005.2(b)(3). *See* Regulation E, 12 CFR 1005.2(b)(3) and comment 2(b)(3)(i)–6. A prepaid account number that can access such a digital wallet would be a hybrid prepaid-credit card if it meets the conditions set forth in § 1026.61(a). To illustrate:

A. A prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card where it can be used from time to time to access a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing a transaction

conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers as described in § 1026.61(a)(2)(i).

B. A prepaid account number that can access such a digital wallet also is a hybrid prepaid-credit card where it can be used from time to time to access the stored credentials for a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers as described in § 1026.61(a)(2)(i).

C. A prepaid account number that can access such a digital wallet is not a hybrid prepaid-credit card with respect to credentials stored in the prepaid account that can access a non-covered separate credit feature as described in § 1026.61(a)(2)(ii) that is not offered by the prepaid account issuer, its affiliate, or its business partner, even if the prepaid account number can access those credentials in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers.

D. A prepaid account number that can access such a digital wallet is not a hybrid prepaid-credit card with respect to credentials stored in the prepaid account that can access a non-covered separate credit feature as described in § 1026.61(a)(2)(ii) where the prepaid account number cannot access those credentials in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers, even if such credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

ii. A digital wallet is not a prepaid account under Regulation E, 12 CFR 1005.2(b)(3), if the digital wallet can never be loaded with funds, such as a digital wallet that only stores payment credentials for other accounts. *See* Regulation E, 12 CFR 1005.2(b)(3) and comment 2(b)(3)(i)–6. An account number that can access such a digital wallet would not be a hybrid prepaid-credit card under § 1026.61(a), even if it stores a credential for a separate credit feature that is offered by the digital wallet provider, its affiliate, or its business partner and can be used in the course of a transaction involving the digital wallet.

5. *Prepaid account that can be used for bill payment services.* Where a prepaid account can be used for online bill payment services offered by the prepaid account issuer, the prepaid card (including a prepaid account number) that can access that prepaid account is a hybrid prepaid-credit card if it meets the requirements set forth in § 1026.61(a). For example, if a prepaid account number can be used from time to time to initiate a transaction using the online bill payment service offered by the prepaid account issuer to pay a bill, and credit can be drawn, transferred, or authorized to be drawn or transferred, to the prepaid account from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing that transaction as described in § 1026.61(a)(2)(i), the prepaid account number would be a hybrid prepaid-credit card under § 1026.61(a). In this case, the prepaid account number can be used to draw or transfer credit, or authorize the draw or transfer of credit, from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of completing a transaction to pay for goods or services through the online bill payment service.

61(a)(2) Prepaid Card Can Access Credit From a Covered Separate Credit Feature

1. *Draws or transfers of credit.* i. For a prepaid card to be a hybrid prepaid-credit card under § 1026.61(a)(2)(i) with respect to a separate credit feature, the prepaid account must be structured such that the draw or transfer of credit, or authorizations of either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner is capable of occurring in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct person-to-person transfers. See comment 61(a)(2)–2 for guidance on when draws or transfers of credit can occur in the course of authorizing, settling, or otherwise completing a transaction described in § 1026.61(a)(2)(i). In this case, the separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under § 1026.61(a)(2)(i).

ii. A prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether:

A. The credit is pushed from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers; or

B. The credit is pulled from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

iii. A prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether the covered separate credit feature can only be used as an overdraft credit feature, solely accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways.

2. *Credit that can be accessed from a separate credit feature in the course of authorizing, settling, or otherwise completing a transaction.* i. Under § 1026.61(a)(2)(i), a prepaid card is a hybrid prepaid-credit card when the card can be used from time to time to access a separate credit feature that is offered by the prepaid account issuer, its affiliate, or its business partner and can be used to access credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. A draw, transfer, or authorization of a draw or transfer from a separate credit feature is deemed to be in the ''course of authorizing, settling, or otherwise completing'' a transaction if it occurs during the authorization phase of the transaction as discussed in comment 61(a)(2)–2.ii or in later periods up to the settlement of the transaction, as discussed in comment 61(a)(2)–2.iii.

ii. The following examples illustrate transactions where credit can be drawn, transferred, or authorized to be drawn or transferred from a separate credit feature in the course of authorizing a transaction.

A. A transaction initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is transferred from the credit feature to the asset feature at the time the transaction is authorized to complete the transaction.

B. A transaction initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is directly drawn from the credit feature to complete the transaction, without transferring funds into the prepaid account.

iii. The following examples illustrate transactions where credit can be drawn, transferred, or authorized to be drawn or transferred, in the course of settling a transaction.

A. A transaction initiated using a prepaid card when there are sufficient or available funds in the asset feature of the prepaid account at the time of authorization to cover the amount of the transaction but where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit automatically is drawn, transferred, or authorized to be drawn or transferred from the credit feature at settlement to pay the transaction.

B. A transaction that was not authorized in advance where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit automatically is drawn, transferred, or authorized to be drawn or transferred from the credit feature at settlement to pay the transaction.

3. *Accessing credit when the asset feature has sufficient funds.* Section 1026.61(a)(2)(i) applies where the prepaid card can be used from time to time to draw funds from a covered separate credit feature that is offered by a prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, even if there are sufficient or available funds in the asset feature of the prepaid account to complete the transaction. For example, the following separate credit feature would meet the conditions of § 1026.61(a)(2)(i).

i. The prepaid card can be used from time to time both to access the asset feature of a

prepaid account and to draw on the covered separate credit feature in the course of a transaction independent of whether there are sufficient or available funds in the asset feature to complete the transaction. For example, assume that a consumer has $50 available funds in her prepaid account. The consumer initiates a $25 transaction with the card to purchase goods and services. If the consumer chooses at the time the transaction is initiated to use the card to access the prepaid account, the card will draw on the funds in the asset feature of the prepaid account to complete the transaction. If the consumer chooses at the time the transaction is initiated to use the card to access the credit feature, the card will draw on credit from the credit feature to complete the transaction, regardless of the fact that there were sufficient or available funds the prepaid account to complete the transaction.

4. *Covered separate credit features.* i. Under § 1026.61(a)(2)(i), a separate credit feature that meets the conditions of § 1026.61(a)(2)(i) is defined as a covered separate credit feature. In this case, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account. Section 1026.61 and other provisions in the regulation and commentary related to hybrid prepaid-credit cards refer to this credit feature either as a covered separate credit feature or a covered separate credit feature accessible by a hybrid prepaid-credit card. *See, e.g.,* §§ 1026.4(c)(4), 1026.7(b)(11)(ii)(A), 1026.12(d)(3)(ii), and 1026.60(a)(5)(iv) and (b). In addition, several provisions in the regulation and commentary also describe this arrangement as one where a covered separate credit feature and an asset feature on a prepaid account are both accessible by a hybrid prepaid-credit card as defined in § 1026.61. *See, e.g.,* §§ 1026.4(b)(11), 1026.6(b)(3)(iii)(D), and 1026.13(i)(2).

ii. If a prepaid card is capable of drawing or transferring credit, or authorizing either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct a person-to-person transfer, the credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card, even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, with respect to a covered separate credit feature, a consumer may use the prepaid card at the prepaid account issuer's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. This credit transaction is considered a credit transaction on a covered separate credit feature accessible by a hybrid prepaid-credit card, even though the load or transfer of funds occurred outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

5. *Non-covered separate credit features.* A separate credit feature that does not meet the conditions set forth in § 1026.61(a)(2)(i) is defined as a non-covered separate credit feature as described in § 1026.61(a)(2)(ii). A prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature. To illustrate:

i. A prepaid card is not a hybrid prepaid-credit card under § 1026.61(a)(2)(i) with respect to a separate credit feature if the credit feature is not offered by the prepaid account issuer, its affiliate, or its business partner. This is true even if the draw or transfer of credit, or authorization of either, occurs during the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, assume a consumer links her prepaid account to a credit card issued by a card issuer that is not the prepaid account issuer, its affiliate, or its business partner so that credit is drawn automatically into the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card for which there are insufficient funds in the asset feature. In this case, the separate credit feature is a non-covered separate credit feature under § 1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card with respect to the separate credit feature offered by the unrelated third-party card issuer.

ii. Even if a separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner, a prepaid card is not a hybrid prepaid-credit card under § 1026.61(a)(2)(i) with respect to that separate credit feature if the separate credit feature cannot be accessed within the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, assume that a consumer can only conduct a draw or transfer of credit, or authorization of either, from a separate credit feature to a prepaid account at the prepaid account issuer's Web site, and these draws, transfers, or authorizations of either, cannot occur in the course of authorizing, settling, or otherwise completing transactions at the Web site to obtain goods or services, obtain cash, or conduct person-to-person transfers. In this case, the separate credit feature is a non-covered separate credit feature under § 1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card with respect to this non-covered separate credit feature.

iii. The person offering the non-covered separate credit feature does not become a card issuer under § 1026.2(a)(7) and thus does not become a creditor under § 1026.2(a)(17)(iii) or (iv) because the prepaid card can be used to access credit from the non-covered separate credit feature. The person offering the non-covered separate credit feature, however, may already have obligations under this regulation with respect to that separate credit feature. For example, if the non-covered separate credit feature is an open-end credit card account offered by an unrelated third-party creditor that is not an affiliate or business partner of the prepaid account issuer, the person already will be a card issuer under § 1026.2(a)(7) and a creditor under § 1026.2(a)(17)(iii). Nonetheless, in that case, the person does not need to comply with the provisions in the regulation applicable to hybrid prepaid-credit cards even though the prepaid card can access credit from the non-covered separate credit feature. The obligations under this regulation that apply to a non-covered separate credit feature are not affected by the fact that the prepaid card can access credit from the non-covered separate credit feature. *See* § 1026.6(b)(3)(iii)(E) and comments 4(b)(11)–1.ii, 6(b)(2)–2, 6(b)(3)(iii)(E)–1, 12(d)(3)–2.iii, 52(a)(2)–3, 52(b)–4, 55(a)–4, and 60(b)–4.

6. *Prepaid card that can access multiple separate credit features.* i. Even if a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature, it is not a hybrid prepaid-credit card with respect to any non-covered separate credit features.

ii. For example, assume that a prepaid card can access ''Separate Credit Feature A'' where the card can be used from time to time to access credit from a separate credit feature that is offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. In addition, assume that the prepaid card can also access ''Separate Credit Feature B'' but that credit feature is being offered by an unrelated third-party creditor that is not the prepaid account issuer, its affiliate, or its business partner. The prepaid card is a hybrid prepaid-credit card with respect to Separate Credit Feature A because it is a covered separate credit feature. The prepaid card, however, is not a hybrid prepaid-credit card with respect to Separate Credit Feature B because it is a non-covered separate credit feature.

61(a)(3) Prepaid Card Can Access Credit Extended Through a Negative Balance on the Asset Feature

61(a)(3)(i) In General

1. *Credit accessed on an asset feature of a prepaid account.* i. See comment 2(a)(14)–3 for examples of when transactions authorized or paid on the asset feature of a prepaid account meet the definition of credit under § 1026.2(a)(14).

ii. Except as provided in § 1026.61(a)(4), a prepaid card would trigger coverage as a hybrid prepaid-credit card if it is a single device that can be used from time to time to access credit that can be extended through a negative balance on the asset feature of the prepaid account. (However, unless the only credit offered meets the requirements of § 1026.61(a)(4), such a product structure would violate the rules under § 1026.61(b).) A credit extension through a negative balance on the asset feature of a prepaid account can occur during the authorization phase of the transaction as discussed in comment

61(a)(3)(i)–1.iii or in later periods up to the settlement of the transaction, as discussed in comment 61(a)(2)(i)–1.iv.

iii. The following example illustrates transactions where a credit extension occurs during the course of authorizing a transaction.

A. A transaction initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is extended through a negative balance on the asset feature of the prepaid account when the transaction is authorized.

iv. The following examples illustrate transactions where a credit extension occurs at settlement.

A. Transactions that occur when there are sufficient or available funds in the asset feature of the prepaid account at the time of authorization to cover the amount of the transaction but where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit is extended through a negative balance on the asset feature at settlement to pay those transactions.

B. Transactions that settle even though they were not authorized in advance where credit is extended through a negative balance on the asset feature at settlement to pay those transactions.

61(a)(3)(ii) Negative Asset Balances

1. *Credit extended on the asset feature of the prepaid account.* Section 1026.61(a)(3)(i) determines whether a prepaid card triggers coverage as a hybrid prepaid-credit card under § 1026.61(a), and thus, whether a prepaid account issuer is a card issuer under § 1026.2(a)(7) subject to this regulation, including § 1026.61(b). However, § 1026.61(b) requires that any credit feature accessible by a hybrid prepaid-credit card must be structured as a separate credit feature using either a credit subaccount of the prepaid account or a separate credit account. In that case, a card issuer would violate § 1026.61(b) if it structures the credit feature as a negative balance on the asset feature of the prepaid account, unless the only credit offered in connection with the prepaid account satisfies § 1026.61(a)(4). A prepaid account issuer can use a negative asset balance structure to extend credit on a prepaid account if the prepaid card is not a hybrid prepaid-credit card as described in § 1026.61(a)(4).

61(a)(4) Exception

1. *Prepaid card that is not a hybrid prepaid-credit card.* i. A prepaid card that is not a hybrid prepaid-credit card as described in § 1026.61(a) is not a credit card under this regulation. A prepaid card is not a hybrid prepaid-credit card if:

A. The card cannot access credit from a covered separate credit feature under § 1026.61(a)(2)(i), though it is permissible for it to access credit from a non-covered separate credit feature as described under § 1026.61(a)(2)(ii); and

B. The card can only access credit extended through a negative balance on the asset feature of the prepaid account in accordance with both the conditions set forth in § 1026.61(a)(4)(ii)(A) and (B).

ii. Below is an example of when a prepaid card is not a hybrid prepaid-credit card because the conditions set forth in § 1026.61(a)(4) have been met.

A. The prepaid card can only access credit extended through a negative balance on the asset feature of the prepaid account in accordance with both the conditions set forth in § 1026.61(a)(4)(ii)(A) and (B). The card can access credit from a non-covered separate credit feature as defined in § 1026.61(a)(2)(ii), but cannot access credit for a covered separate credit feature as defined in § 1026.61(a)(2)(i).

iii. Below is an example of when a prepaid card is a hybrid prepaid-credit card because the conditions set forth in § 1026.61(a)(4) have not been met.

A. When there is insufficient or unavailable funds in the asset feature of the prepaid account at the time a transaction is initiated, the card can be used to draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner during the authorization phase to complete the transaction so that credit is not extended on the asset feature of the prepaid account. The card is a hybrid prepaid-credit card because it can be used to draw, transfer, or authorize the draw or transfer of credit from a separate credit feature in the circumstances set forth in § 1026.61(a)(2)(i).

iv. In the case where a prepaid card is not a hybrid prepaid-credit card because the only credit it can access meets the conditions set forth in § 1026.61(a)(4):

A. The prepaid account issuer is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under § 1026.2(a)(17)(iii) or (iv) because it is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under § 1026.2(a)(17)(i) as a result of imposing fees on the prepaid account because those fees are not finance charges. *See* comment 4(b)(11)–1.iii.

Paragraph 61(a)(4)(ii)(A)

1. *Authorization not required for every transaction.* The prepaid account issuer is not required to receive an authorization request for each transaction to comply with § 1026.61(a)(4)(ii)(A). Nonetheless, the prepaid account issuer generally must establish an authorization policy as described in § 1026.61(a)(4)(ii)(A) and have reasonable practices in place to comply with its established policy with respect to the authorization requests it receives. In that case, a prepaid account issuer is deemed to satisfy § 1026.61(a)(4)(ii)(A) even if a negative balance results on the prepaid account when a transaction is settled.

2. *Provisional credit.* A prepaid account issuer may still satisfy the requirements set forth in § 1026.61(a)(4)(ii)(A) even if a negative balance results on the asset feature of the prepaid account because the prepaid account issuer debits the amount of any provisional credit that was previously granted on the prepaid account as specified in Regulation E, 12 CFR 1005.11, so long as the prepaid account issuer otherwise complies with the conditions set forth in § 1026.61(a)(4). For example, under § 1026.61(a)(4), a prepaid account issuer may not impose a fee or charge enumerated under § 1026.61(a)(4)(ii)(B) with respect to this negative balance.

3. *Delayed load cushion.* i. *Incoming fund transfers.* For purposes of § 1026.61(a)(4)(ii)(A)(*2*), cases where the prepaid account issuer has received an instruction or confirmation for an incoming electronic fund transfer originated from a separate asset account to load funds to the prepaid account include a direct deposit of salary from an employer and a direct deposit of government benefits.

ii. *Consumer requests.* For purposes of § 1026.61(a)(4)(ii)(A)(*2*), cases where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account include where the consumer, in the course of a transaction, requests a load from a deposit account or uses a debit card to cover the amount of the transaction if there are insufficient funds in the asset feature of the prepaid account to pay for the transaction.

4. *Permitted authorization circumstances are not mutually exclusive.* The two circumstances set forth in § 1026.61(a)(4)(ii)(A)(*1*) and (*2*) are not mutually exclusive. For example, assume a prepaid account issuer has adopted the $10 cushion described in § 1026.61(a)(4)(ii)(A)(*1*), and the delayed load cushion described in § 1026.61(a)(4)(ii)(A)(*2*). Also, assume the prepaid account issuer has received an instruction or confirmation for an incoming electronic fund transfer originated from a separate asset account to load funds to the prepaid account but the prepaid account issuer has not received the funds from the separate asset account. In this case, a prepaid account issuer satisfies § 1026.61(a)(4)(iii)(A) if the amount of a transaction at authorization will not cause the prepaid account balance to become negative at the time of the authorization by more than the requested load amount plus the $10 cushion.

Paragraph 61(a)(4)(ii)(B)

1. *Different terms on different prepaid account programs.* Section 1026.61(a)(4)(ii)(B) does not prohibit a prepaid account issuer from charging different terms on different prepaid account programs. For example, the terms may differ between a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program, and a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts.

Paragraph 61(a)(4)(ii)(B)(1)

1. *Fees or charges covered by § 1026.61(a)(4)(ii)(B)(1).* To qualify for the exception in § 1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic

basis. Section 1026.61(a)(4)(ii)(B)(*1*) does not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available.

i. The types of fees or charges prohibited by § 1026.61(a)(4)(ii)(B)(*1*) include:

A. A daily, weekly, monthly, or other periodic fee assessed each period a prepaid account has a negative balance or is in ''overdraft'' status; and

B. A daily, weekly, monthly or other periodic fee to hold the prepaid account where the amount of the fee that applies each period is higher if the consumer is enrolled in a purchase cushion as described in § 1026.61(a)(4)(ii)(A)(*1*) or a delayed load cushion as described in § 1026.61(a)(4)(A)(ii)(*2*) during that period. For example, assume that a consumer will pay a fee to hold the prepaid account of $10 if the consumer is not enrolled in a purchase cushion as described in § 1026.61(a)(4)(ii)(A)(*1*) or a delayed load cushion as described in § 1026.61(a)(4)(A)(ii)(*2*) during that month, and will pay a fee to hold the prepaid account of $15 if the consumer is enrolled in a purchase cushion or delayed load cushion that period. The $15 charge is a charge described in § 1026.61(a)(4)(ii)(B)(*1*) because the amount of the fee to hold the prepaid account is higher based on whether the consumer is participating in the payment cushion or delayed load cushion during that period.

ii. Fees or charges described in § 1026.61(a)(4)(ii)(B) do not include:

A. A daily, weekly, monthly, or other periodic fee to hold the prepaid account where the amount of the fee is not higher based on whether the consumer is enrolled in a purchase cushion as described in § 1026.61(a)(4)(ii)(A)(*1*) or a delayed load cushion as described in § 1026.61(a)(4)(A)(ii)(*2*) during that period, whether or how much credit has been extended during that period, or the amount of credit that is available during that period.

Paragraph 61(a)(4)(ii)(B)(2)

1. *Fees or charges covered by § 1026.61(a)(4)(ii)(B)(2).* To qualify for the exception in § 1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature.

i. These types of fees or charges include:

A. A fee imposed because the balance on the prepaid account becomes negative;

B. Interest charges attributable to a periodic rate that applies to the negative balance;

C. Any fees for delinquency, default, or a similar occurrences that result from the prepaid account having a negative balance or being in ''overdraft'' status, except that the actual costs to collect the credit may be imposed if otherwise permitted by law; and

D. Late payment fees.

ii. Fees or charges described in § 1026.61(a)(4)(ii)(B) do not include:

A. Fees for actual collection costs, including attorney's fees, to collect any credit extended on the prepaid account if otherwise permitted by law. Late payment fees are not considered fees imposed for actual collection costs. *See* comment 61(a)(4)(ii)(B)(*2*)–1.i.D.

Paragraph 61(a)(4)(ii)(B)(3)

1. *Fees or charges covered by § 1026.61(a)(4)(ii)(B)(3).* i. To qualify for the exception in § 1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that are higher when credit is extended on the asset feature or when there is a negative balance on the asset feature. These types of fees or charges include:

A. Transaction fees where the amount of the fee is higher based on whether the transaction accesses only asset funds in the asset feature or accesses credit. For example, a $15 transaction charge is imposed on the asset feature each time a transaction is authorized or paid when there are insufficient or unavailable funds in the asset feature at the time of the authorization or settlement. A $1.50 fee is imposed each time a transaction only accesses funds in the asset feature. The $15 charge is a charge described in § 1026.61(a)(4)(ii)(B)(*3*) because the amount of the transaction fee is higher when the transaction accesses credit than the amount of the fee that applies when the transaction accesses only asset funds in the asset feature; and

B. A fee for a service on the prepaid account where the amount of the fee is higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges a higher fee for an ATM balance inquiry requested on the prepaid account if the balance inquiry is requested when there is a negative balance on the asset feature than the amount of fee imposed when there is a positive balance on the asset feature, the balance inquiry fee is a fee described in § 1026.61(a)(4)(ii)(B)(*3*) because the amount of the fee is higher based on whether it is imposed when there is a negative balance on the asset feature.

ii. Fees or charges described in § 1026.61(a)(4)(ii)(B) do not include:

A. Transaction fees on the prepaid account where the amount of the fee imposed when the transaction accesses credit does not exceed the amount of the fee imposed when the transaction only accesses asset funds in the prepaid account. For example, assume a $1.50 transaction charge is imposed on the prepaid account for each paid transaction that is made with the prepaid card, including transactions that only access asset funds, transactions that take the account balance negative, and transactions that occur when the account balance is already negative. The $1.50 transaction charge imposed on the prepaid account is not a fee described in § 1026.61(a)(4)(ii)(B); and

B. A fee for a service on the prepaid account where the amount of the fee is not higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges the same amount of fee for an ATM balance inquiry regardless of whether there is a positive or negative balance on the asset feature, the balance inquiry fee is not a fee described in § 1026.61(a)(4)(ii)(B).

Paragraph 61(a)(4)(ii)(C)

1. *Fees or charges not covered by § 1026.61(a)(4)(ii)(B).* Under § 1026.61(a)(4)(ii)(C), a prepaid account issuer may still satisfy the exception in § 1026.61(a)(4) even if it debits fees or charges from the prepaid account when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in § 1026.61(a)(4)(ii)(B). A fee or charge not otherwise covered by § 1026.61(a)(4)(ii)(B) does not become covered by that provision simply because there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee when it is imposed. For example, assume that a prepaid account issuer imposes a fee for an ATM balance inquiry and the amount of the fee is not higher based on whether credit is extended or whether there is a negative balance on the prepaid account. Also assume that when the fee is imposed, there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee. The ATM balance inquiry fee does not become a fee covered by § 1026.61(a)(4)(ii)(B) because the fee is debited from the prepaid account balance when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the fee at the time it is imposed.

61(a)(5) Definitions

Paragraph 61(a)(5)(iii)

1. *Arrangement.* A person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature is a business partner of a prepaid account issuer where the person that can extend credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate. A person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature or the person's affiliate has an arrangement with a prepaid account issuer or its affiliate for purposes of § 1026.61(a)(5)(iii) if the circumstances in either paragraph i or ii are met:

i. A person that can extend credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the prepaid account issuer or its affiliate has an agreement with the person that can extend credit or its affiliate that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from a credit feature offered by the person that can extend credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. However, the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network.

ii. A person that can extend credit or its affiliate has an arrangement with a prepaid

account issuer or its affiliate if the prepaid account issuer or its affiliate:

A. Has a business, marketing, or promotional agreement or other arrangement with the person that can extend credit or its affiliate where the agreement or arrangement provides that:

1. Prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person that can extend credit; or

2. The credit feature will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to link the separate credit feature to the prepaid account to be used as an overdraft credit feature); and

B. At the time of the marketing agreement or arrangement described in comment 61(a)(5)(iii)–1.ii.A, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the credit feature in the course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. This requirement is satisfied even if there is no specific agreement, as described in comment 61(a)(5)(iii)–1.i, between the parties that the card can access the credit feature. For example, this requirement is satisfied even if the draw, transfer, or authorization of the draw or transfer from the credit feature is effectuated through a card network or payment network.

2. *Relationship to prepaid account issuer.* A person (other than a prepaid account issuer or its affiliates) that can extend credit through a separate credit feature will be deemed to have an arrangement with the prepaid account issuer if the person that can extend credit, its service provider, or the person's affiliate has an arrangement with the prepaid account issuer, its service provider such as a program manager, or the issuer's affiliate. In that case, the person that can extend credit will be a business partner of the prepaid account issuer. For example, if the affiliate of the person that can extend credit has an arrangement with the prepaid account issuer's affiliate, the person that can extend credit will be the business partner of the prepaid account issuer.

Paragraph 61(a)(5)(iv)

1. *Applicability of credit feature definition.* The definition of credit feature set forth in § 1026.61(a)(5)(iv) only defines that term for purposes of this regulation in relation to credit in connection with a prepaid account or prepaid card. This definition does not impact when an account, subaccount or negative balance is a credit feature under the regulation with respect to credit in relation to a checking account or other transaction account that is not a prepaid account, or a debit card. *See, e.g.,* comments 2(a)(15)–2.ii.A and 4(b)(2)–1 for where the term credit feature is used in relation to a debit card or asset account other than a prepaid account.

2. *Asset account other than a prepaid account.* A credit feature for purposes of § 1026.61(a)(5)(iv) does not include an asset account other than a prepaid account that has an attached overdraft feature. For example, assume that funds are loaded or transferred to a prepaid account from an asset account (other than a prepaid account) on which an overdraft feature is attached. The asset account is not a credit feature under § 1026.61(a)(5)(iv) even if the load or transfer of funds to the prepaid account triggers the overdraft feature that is attached to the asset account.

Paragraph 61(a)(5)(vii)

1. *Definition of prepaid card.* The term ''prepaid card'' in § 1026.61(a)(5)(vii) includes any card, code, or other device that can be used to access a prepaid account, including a prepaid account number or other code.

61(b) Structure of Credit Features Accessible by Hybrid Prepaid-Credit Cards

1. *Credit subaccount on a prepaid account.* If a credit feature that is accessible by a hybrid prepaid-credit card is structured as a subaccount of the prepaid account, the credit feature must be set up as a separate balance on the prepaid account such that there are at least two balances on the prepaid account—the asset account balance and the credit account balance.

2. *Credit extended on a credit subaccount or a separate credit account.* Under § 1026.61(b), with respect to a credit feature that is assessed by a hybrid prepaid-credit card, a card issuer at its option may structure the credit feature as a separate credit feature, either as a subaccount on the prepaid account that is separate from the asset feature or as a separate credit account. The separate credit feature would be a covered separate credit feature accessible by a hybrid prepaid-credit card under § 1026.61(a)(2)(i). Regardless of whether the card issuer is structuring its covered separate credit feature as a subaccount of the prepaid account or as a separate credit account:

i. If at the time a prepaid card transaction is initiated there are insufficient or unavailable funds in the asset feature of the prepaid account to complete the transaction, credit must be drawn, transferred or authorized to be drawn or transferred, from the covered separate credit feature at the time the transaction is authorized. The card issuer may not allow the asset feature on the prepaid account to become negative and draw or transfer the credit from the covered separate credit feature at a later time, such as at the end of the day. The card issuer must comply with the applicable provisions of this regulation with respect to the credit extension from the time the prepaid card transaction is authorized.

ii. For transactions where there are insufficient or unavailable funds in the asset feature of the prepaid account to cover that transaction at the time it settles and the prepaid transaction either was not authorized in advance or the transaction was authorized and there were sufficient or available funds in the prepaid account at the time of authorization to cover the transaction, credit must be drawn from the covered separate credit feature to settle these transactions. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions of this regulation from the time the transaction is settled.

iii. If a negative balance would result on the asset feature in circumstances other than those described in comment 61(b)–2.i and ii, credit must be drawn from the covered separate credit feature to avoid the negative balance. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions in this regulation from the time credit is drawn from the covered separate credit feature. For example, assume that a fee for an ATM balance inquiry is imposed on the prepaid account when there are insufficient or unavailable funds to cover the amount of the fee when it is imposed. Credit must be drawn from the covered separate credit feature to avoid a negative balance.

61(c) Timing Requirement for Solicitation or Application With Respect to Hybrid Prepaid-Credit Cards

1. *Meaning of registration of a prepaid card or prepaid account.* A prepaid card or prepaid account is registered, such that the 30-day timing requirement required by § 1026.61(c) begins, when the prepaid account issuer 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 timing requirement 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. With respect to a prepaid account for which customer identification and verification are completed before the account is opened, the 30-day timing requirement begins on the day the prepaid account is opened.

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.ii for additional rules that apply to the addition of a credit card 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.

3. *Replacement or substitute cards.* A card issuer is not required to comply with § 1026.61(c) when a hybrid prepaid-credit card is permitted to be replaced, or substituted, for another hybrid prepaid-credit card without a request or application under § 1026.12(a)(2) and related commentary. For example, § 1026.61(c) does not apply to situations where a prepaid account or credit feature that is accessible by a hybrid prepaid-credit card is replaced because of security concerns and a new hybrid prepaid-credit card is issued to access the new prepaid account or covered separate credit feature without a request or application under § 1026.12(a)(2).

* * * * *

Dated: October 3, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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